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Policy Review

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FRANZ JOSEF STRAUSS

The New Entrepreneurial Revolution
NORMAN MACRAE

Khomeini's Political Heresy
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Privatizing the City
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Affirmative Action: Negative Results
VICTORIA SACKETT ORRIN HATCH NICHOLAS CAPALDI

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Controversy

Dear Sir:

I have read "The Unnewsworthy Holocaust" in *Policy Review* (Winter 1979), and I find many of the authors' points well taken. However, Messrs. Adams and Joblove have overlooked the elemental explanation for the difficulties the U.S. television networks faced in covering the devastation in Cambodia: we could not get into the country.

After the Khmer Rouge forces overran Phnom Penh in April, 1975, the country was completely closed to the outside world. Foreign journalists who had been covering the fall of Cambodia to the Khmer Rouge were forced to leave, and during the period from 1975 to 1978, only three Western journalists were allowed into the country. Since we were not able to gain entrance to Cambodia, there was no way television news could show the actual tragedy.

Although there were refugees in camps along the Thai border who were willing to describe the atrocities committed by the Khmer Rouge, some reporters and editors were reluctant to use their stories because they were not always completely reliable.

Since the Khmer Rouge forces were overthrown a year ago, however, the networks' coverage has improved. In 1979, ABC was the first network to have staff personnel enter Cambodia. ABC's "World News Tonight" broadcast three reports during May of last year and three additional reports during November and December on the cruelty of the Khmer Rouge.

In March ABC will broadcast an hour-long ABC "Close up" documentary detailing the depth of the starvation and devastation in Cambodia and the great need the survivors have if they are to stay alive and rebuild their nation.

Mary Fifield
ABC News
New York

Dear Sir:

I read with interest the *Policy Review* article entitled "The Unnewsworthy Holocaust" regarding the mass murders in Cambodia.

The article mentioned the 20-second summary of the story I gave for NBC on August 21, 1978. It did not mention three consecutive weekends in late August and early September that we had extensive lead-story material on Cambodia.

Correspondent Jack Reynolds did some of the most probing and sensitive reporting to come out of that part of the world. It was also not mentioned in the article.

I cannot speak for NBC newscasts other than the weekend editions nor can I speak for the reporting on the other networks. I can only say that, from the time the Cambodian situation came to light through the series of diplomatic visits to the refugee camps, the "holocaust" was far from "unnewsworthy" on the weekend

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editions of NBC Nightly News.

Jessica Savitch
NBC News
New York

William Adams replies:

The representative of ABC News says the "elemental explanation" for ABC's failure to run even a single story about "devastation in Cambodia" (on early-evening weekday news) over a two year period during the height of Khmer Rouge rule (April 1976 - April 1978) was that ABC was denied entrance to "show the actual tragedy" and that some ABC people questioned the reliability of reports from thousands of refugees.

It is "elemental" that ABC would not switch, for example, a four-minute film story of Reggie Jackson starting spring training (3/8/78) in order to show a studio report of accounts and allegations that at least a few hundred thousand Cambodians had recently died under the Khmer Rouge. But now that Pol Pot's terror is over, ABC's retrospectives – presumably repleat with superb pictures and the fullest verification – must certainly be impressive. (Pages 60-61 of the article, by the way, do consider the problem of access.)

Our research focused primarily on weekday, early-evening news because the weekend news was often pre-empted in Nashville (as in many other cities) where Vanderbilt's *Television News Index and Abstracts* is prepared. We did not think that the weekend newscasts would vary systematically from the consistent pattern found elsewhere, but it is useful to learn that in several weekend editions of NBC Nightly News in 1978 Cambodia was emphasized.

Dear Sir:

Professor van den Haag's article on government subsidies for the arts [Fall 1979] combines an artificially restricted analysis of the grounds for government intervention with unsubstantiated and unrealistic assumptions about the condition of the arts and artists in the United States. Moreover, his hypotheses as to the detrimental effects that government support might have on the arts do not square with experience under the actual system of support that has been operating for over a decade.

Professor van den Haag asserts that only a public goods rationale, involving "indivisible collective benefits," could justify a subsidy for the arts. He suggests that the only such benefit the arts might afford is to promote "national cohesion"; this, he alleges, they do not do.

One can imagine other collective benefits, however. Accomplishments in the arts might enhance the international stature of the nation. Exposure to the arts might be considered essential in educating citizens of a democracy to the virtues of creative, discriminating, and critical thought, or to the traditions and values of Western civilization.

I need only suggest reasonably convincingly that we can imagine collective benefits other than the one so easily disposed of by the Professor. Once we do recognize the possibility of such benefits, we can also recognize another

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rationale for subsidy: a "merit goods" justification.

Viewed under the merit goods light, we would see an underdeveloped artistic sector in our society, a sector in which unsubsidized supply and demand have called forth too little of a good thing. In fact, there is no more reason to believe – at least Professor van den Haag adduces no evidence to convince us - that an unsubsidized arts sector would produce nearly all of the quality art that could be produced (so that a subsidy would only encourage the production of inferior art) than there is to believe just the opposite, that the unsubsidized sector just scratches the surface of high quality American artistic creativity.

Crucial to van den Haag's argument is the assertion that the government could not distinguish between talented and untalented artists who would apply for subsidies. The record of the National Endowment for the Arts suggests that the government has, in fact, done a surprisingly good job of sifting and culling by relying on reputable artists, rather than bureaucrats, to screen applications.

One can certainly argue that, within an austere government budget, an arts subsidy might carry a low priority relative to other proposed subsidies. That is far different from denying that such a subsidy could serve any legitimate public purpose. That position has been rejected by the Congress and directly by local voters in approving cultural center bond issues.

There is a lively debate going on over the relative need for different kinds of art subsidies, their distribution among factors of supply and demand, and their potential effect on the nature and quality of artistic production. Professor van den Haag's foray into this debate reveals that he has not looked at what meager statistical date on the arts the debate have uncovered. Figures on museum attendance and operating expenses, for example, confound his musings about the effects increased museum admission fees might have.

This is the most disappointing aspect of this article: having failed to make out his case against the very idea of arts subsidy, the author has failed even to register convincing reservations as to its size and shape. The interested reader would do well to consult *The Subsidized Muse* (The Twentieth Century Fund, 1978) by Dick Netzer of New York University. Professor van den Haag ought to consult it, too.

Robert A. Peck
Washington, D.C.

Dear Sir:

Ernest van den Haag denies that government should subsidize the arts but I think his reason is inadequate. Most important in his discussion is the following passage:

> "An adequate argument for federal support of the arts must show, then, that they yield indivisible collective benefits (as does the police force). If the arts do yield such benefits and they are of sufficient magnitude, the government is justified in compelling individuals to pay taxes, compulsory levies, to pay for the arts, regardless of whether an individual taxpayer feels benefited."

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At no point does he establish the truth of these ideas. Moreover, it isn't as if there weren't respectable arguments available against the idea Professor van den Haag invokes. Professors Friedman, Nozick, Rand and Hospers, to name just a few, have defended positions which contradict his own. The least one might expect from Professor van den Haag is that he acknowledge that the conception of public goods and the implications he draws from it which are promoted by him are not without difficulties. For one, under some descriptions of what makes something important, there would be no difficulty in showing that subsidies for the arts are justified by his criterion. Also, the indivisible collective benefits from the arts, as from morality, religion, education, and practically everything else prized by some articulate individuals, have been proclaimed persuasively by numerous individuals – most recently by Henry Fonda who has been campaigning for more federal support for the arts. Van den Haag does not provide any standards by which either the indivisibility of some benefit can be distinguished from its divisibility, or the benefit of something may be distinguished from the harm of it.

So while Professor van den Haag's is a lucid and readable piece which might comfort libertarians and opponents of art subsidies, the arguments he advances will not make the case required to show that such subsidies should not be made.

Tibor R. Machan
State University College,
Fredonia, New York

Ernest van den Haag replies:

It is not easy to respond to Mr. Peck's cryptic non sequiturs. His suggestion that I should read Dick Netzer's *The Subsidized Muse* suggests that I haven't (which is presumptuous) and that the book is relevant to my argument. No reason is given for either suggestion.

Mr. Peck "can imagine. . . collective benefits" for art subsidies. His imagination is hardly the point. No such benefits have been shown or even made plausible. There is no evidence that "accomplishments in the arts" do "enhance the international stature of the nation" or that exposure is "essential in educating citizens to the virtues of creative, discriminating and critical thought" (let alone redundancy and pomposity). Nor is there evidence that a subsidy helped in any of these respects. Mr. Peck confuses assertion and proof. Finally, I do not think that it helps democratic education to compel citizens to pay for education to virtues that "might be considered essential" by Mr. Peck. Those who want these virtues surely can volunteer to pay for them. I know of no proof other than self-serving opinion for Mr. Peck's assertion that the "government has in fact done a surprisingly good job" in selecting art.

"There is a lively debate going on over the relative need for different kinds of art subsidies, their distribution among factors of supply and demand [whatever that means] . . . figures on museum attendance and operating expenses confound [v.d.H.'s] musings about the effect increased admission fees may have." If bureaucrats debate how to share subsidies, why does that justify subsidization? How can

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museum attendance figures confound my advocacy of higher admission fees? That would be quite a trick. Unfortunately we are not told how it is done.

I know of quite respectable arguments in favor of art. None have been advanced in favor of subsidies.

Tibor Machan does not tell wherein the position he attributes to Prof. Friedman et al, including his own, contradicts mine.

Does Mr. Machan believe that the arts a) produce indivisible benefits or b) that they do not or c) that nothing does or d) that indivisible goods should not be subsidized? I find no argument in his letter to persuade me that under the circumstances I listed, subsidies may not be warranted and that these circumstances do not occur in the contemporary United States.

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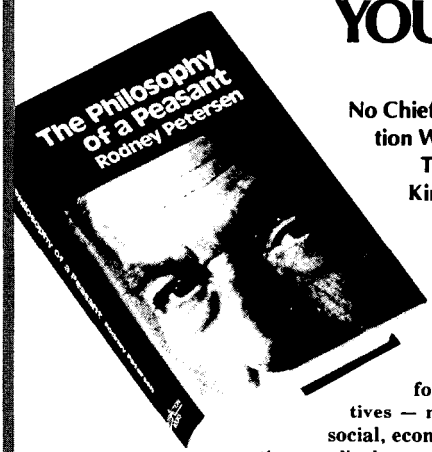

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INTERACTION BOOKS

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Ignoring the People

VICTORIA SACKETT

Affirmative action can be viewed, in many important ways, as an issue not concerned with race. Public attitudes toward specific programs aimed at correcting historical policies of discrimination differ widely from attitudes toward minorities in general. The public is much more inclined to acknowledge the general need for corrective action than it is to approve specific proposals which claim to remedy past injustices. There is a definite cutoff point in support for policies aimed at ensuring equal opportunities for minorities and women. It appears where compensatory efforts cross swords with basic American values. Belief in individualism, an antipathy to preferential treatment and devotion to the principle of achievement through merit rather than ascriptive privilege prove to be stronger influences on public opinion than dedication to affirmative action programs.

One of the most comprehensive analyses of attitudes toward discrimination and affirmative action was compiled by Seymour Martin Lipset and William Schneider in 1978. They looked at nearly one hundred public opinion polls which covered every aspect of the issue from 1935 to 1977. Recently, *Policy Review* commissioned its own survey, conducted by Sindlinger and Company, which attempted to probe some of these same questions. A single poll, of course, cannot be exhaustive. Nonetheless, the *Policy Review* survey seems to confirm Messrs. Lipset and Schneider's earlier findings. People approve the idea of eliminating discrimination through laws. They balk at the notion of preferential treatment.

The *Policy Review* survey does not assess general attitudes toward minorities. However, the Gallup Organization in 1978 provided a comprehensive collection of surveys which serve to update earlier findings. The Gallup surveys showed a steadily increasing liberalization of attitudes on the part of the public, even in some of the most volatile areas of race relations. From 1958 to 1978, willingness to vote for a black for president doubled.

Question: There's always much discussion about the quali-

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fications of presidential candidates – their education, age, race, religion and the like. If your party nominated a generally well-qualified man for president and he happened to be a Negro, would you vote for him? (Question wording varied slightly over the years.)

	Yes	No	No Opinion
1958	38%	53%	9%
1963	47	45	8
1965	59	34	7
1967	54	40	6
1969	67	23	10
1971	70	23	7
1978	77	18	5

Source: Surveys by the Gallup Organization, latest that of July 21-24, 1978.

The increasing acceptance of a proposed black for president was accompanied by a commensurate growth in acceptance of the idea of a woman or a Jew for president, adding strength to the notion that tolerance was on the increase for all minorities.

Question: Between now and the time of the conventions in 1980 there will be more discussion about the qualifications of presidential candidates – their education, age, religions, race, and the like. If your party nominated a woman for president, would you vote for her if she were qualified for the job?. . . . If your party nominated a generally well-qualified man for president and he happened to be a (Negro/Jew), would you vote for him? (Question wording varies somewhat over the years.)

	1937	1949	1955	1958	1961	1963	1965	1967	1969	1971	1975	1978
Woman for president												
Yes	32%	50%	54%	55%	--	57%	----	59%	58%	69%	76%	80%
No	68	50	46	45	----	43	----	41	42	31	24	20
Black for president												
Yes	----	----	----	42	55	51	63	57	74	75	----	81
No	----	----	----	58	45	49	37	43	26	25	----	19
Jew for president												
Yes	----	----	----	69	75	82	84	86	91	----	----	87
No	----	----	----	31	25	18	16	14	9	----	----	13

Source: Surveys by the Gallup Organization, latest that of July 21-24, 1978. In *Public Opinion*, Dec./Jan. 1980.

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Over the same period, there had been a dramatic increase in tolerance expressed by whites toward blacks as neighbors — even when the question was weighted to elicit more negative responses by asking whether people would move if blacks came to live in the neighborhood in great numbers.

Question: If blacks came to live next door, would you move? (Among whites.)

	Yes definitely/Yes might	No
1963	45%	55%
1965	35	65
1978	16	84

Would you move if blacks came to live in great numbers in your neighborhood? (Among whites.)

	Yes definitely/Yes might	No
1963	78%	22%
1965	69	31
1978	45	55

Source: Surveys by the Gallup Organization, latest that of July 7-10, 1978.

Even on the sensitive issue of intermarriage between races, tolerance had grown. Approval among adults of marriages between whites and blacks from 1968 to 1978 increased from 20 percent to 36 percent. A majority still objected to intermarriage, but the "disapprove" response declined from 72 percent in 1968 to 54 percent in 1978.

Louis Harris and Associates conducted their own surveys between October and November of 1978.[1] In the interim between the Gallup and Harris surveys, and following the Lipset/Schneider analysis, the Supreme Court had decided the Bakke case. On June 28, 1978, the Supreme Court ruled in favor of Allan Bakke who had charged reverse discrimination in his efforts to enroll in the University of California medical school at Davis. The Supreme Court ruled that a university could not reserve a set number of places for minority applicants, thus denying white applicants the chance to be accepted for those slots, irrespective of their qualifications. At the same time, the Court stated that it was permissible for schools to include race along with other factors in deciding which applicants to admit.

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The decision itself does not appear to have had a negative effect on overall white attitudes toward minorities, as the Harris surveys revealed. The Harris surveys sampled whites separately from blacks, never presenting a response for the mixed population. In 1976, a Harris survey showed 12 percent of white respondents favoring "separation of the races" when presented with the question "Generally speaking, do you favor full racial integration, integration in some areas of life, or separation of the races?" 28 percent supported "full racial integration" and 48 percent opted for "integration in some areas of life." The 1978 Harris survey showed 35 percent wanting "full racial integration," 42 percent favoring "integration in some areas" and 16 percent favoring "separation of the races." The largest increase appeared in the desire for full integration, though there was also a slight upturn in the number preferring the more absolutist "separation of the races" alternative. Among blacks, 66 percent wanted "full racial integration" in 1978, another 22 percent wanted integration in "some areas" and only 7 percent favored a "separation of the races." The Harris survey confirmed the Gallup 1978 survey concerning interracial dating and marriage. Though there was a large degree of white negativity toward such practices, there was also a steady easing of attitudes evident since the 1963 survey. Also, to quote from the Harris survey analysis "The biggest shifts downward in white aversion arise if 'a black family moves in next door to you' (24 points down), 'a close friend or relative marries a black' (24 points down), 'your child brings a black child home for supper' (22 points down), and 'a black tries on the same suit of clothes (or dress) before you do in a clothing store' (18 points down)."

Messrs. Lipset and Schneider found that "there can be no doubt that a large majority of white Americans have come to accept the proposition that discrimination in hiring is wrong and that government should guarantee operation of the competitive merit or achievement principle by outlawing such discrimination. But every major national study shows that a sizable majority of Americans are also opposed to remedying the effects of past discrimination by giving any special consideration in hiring or school admissions."[2]

It is this broad conclusion that the *Policy Review* survey confirms, whilst deepening our knowledge of public attitudes on this

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complex question. The Sindlinger summary of these findings interestingly states that this poll was "the most difficult survey ever undertaken by Sindlinger in recent years." Questions were pretested and pollsters received "high proportions of no opinions on questions where the response should have been clear-cut, and low proportions of no opinion when higher ratios were in order." As a result the questions underwent "numerous revisions." A special problem was presented by the topic, namely race relations, since on this "attitudes simply cannot be broken down by hard core pro- or anti-camps. There has to be room for variations." In all, the format of questions went through nine revisions.

Consequently, in the first group of questions, namely Questions 1(a) to 1(e), the Sindlinger poll provided a general introductory statement:

> In recent years, many people, including the U.S. Government, have endeavored to improve the social and economic status of minority groups such as Blacks or Hispanic-Americans — as well as women. Some of these activities on racial and sexual discrimination have become very controversial with some people — while other people have paid no attention or have not expressed themselves. I am going to read you some various positions being taken on the subject of minority or racial and sexual discrimination. As I read each position — will you please tell me your degree of agreement or disagreement. That is, where you agree — is your agreement strong or mild? Conversely, when you disagree — is your disagreement strong or mild?

The questions which followed were intended to be variations upon the general theme introduced in this statement and to offer respondents the choice of policies ranging from reliance on voluntary action to government enforcement of affirmative action quotas. The first question was worded as follows: "First is the position that government should take no action — instead we should rely on the people as citizens, business firms and universities to get rid of racial and sexual discrimination on a voluntary basis. How do you agree or disagree on this?" The responses were distributed as follows:

Agree	
Strong	32%
Mild	22

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Disagree	
Strong	19
Mild	28
Total Agree	53
Total Disagree	46
No Opinion	6

Source: Survey by Sindlinger and Company, Inc., conducted for *Policy Review* January 17-30, 1980.

The question itself reveals some problems. First of all, it is an extremely long and complicated question to be read over the telephone, requiring a rather sophisticated retentive capacity on the part of the respondents. Its complexity, reflecting the fact that affirmative action is a complex issue, makes it rather difficult to gauge with precision what elements in it elicited the response. For instance, does the figure of 53 percent overall support for leaving the private sector to solve discrimination voluntarily reflect a widespread American belief that voluntary action is in general superior to government compulsion? And would the respondents continue to support voluntary action to the same degree if over a period it failed to reduce significantly racial and sexual discrimination?

We can get some indication of the answers by examining the breakdown of opinion into strong and mild agreement or disagreement. As the Sindlinger summary puts it, only 31.5 percent strongly agreed with the position of no government action, representing the "hard core of people who are firmly opposed to government intervention in matters of bias." On the other side of the argument, less than a fifth of respondents were strongly in favor of government action. About half the respondents, however, were composed of those who either mildly agreed or disagreed with a proposition. Sindlinger argues that the data show this combined group holding not dissimilar views — which are that a proper combination of government and private sector activity is required to eliminate racial and sexual bias. This interpretation receives some confirmation, as we shall see, from the replies to Question 1 (b)

Accuracy in polling demands utter simplicity in question wording. Each question must be a controlled laboratory experiment, filtering out complicating influences like language

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inferences and multiple ideas. Question 1(b) provides a good example of reliable questioning. Its only drawback is the possibility that some people would not be able to remember accurately the long introductory statement read before the first question.

Question 1(b): Second is the position that there should be laws to prevent all discrimination of any kind on the basis of race or sex throughout the nation. What is your position on this?

Agree	
Strong	48%
Mild	30
Disagree	
Strong	15
Mild	6
Total Agree	77
Total Disagree	22
No Opinion	0.8

Slightly more than three-quarters expressed approval of the notion that there should be legal prohibitions against discrimination on the basis of race nationwide. Approximately two-thirds of that approval was in the area of "strong agreement." It is clear that that some people who, in reply to Question 1(a), expressed support for voluntary action in preference to government enforcement to eliminate discrimination have crossed the floor in response to Question 1(b) and now favor anti-discrimination legislation. Strictly speaking, these two views are inconsistent. If we take this apparent contradiction in conjunction with the Sindlinger interpretation of Question 1(a) above, however, a possible interpretation emerges that a considerable majority of Americans, approximately 70 to 80 percent, favor the elimination of discrimination by voluntary action if possible, but by legal prohibition if necessary. But, as we will see, such strong favor of outlawing discrimination by no menas constitutes a mandate in favor of affirmative programs as they have been anacted so far.

The *Policy Review* survey reveals a marked objection to the lowering of standards in employment and school admissions in

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order to benefit minorities and women. It also shows a decisive opposition to the establishment of government-mandated quotas in these areas. Here we begin to see the conflict between American values and affirmative action.

Question 1(c): Third is the position that business firms, colleges and universities, and law and medical schools – as well as other institutions of learning – should have lower entry, hiring and promotion standards – especially for minority groups and women – who apply for entrance. What is your agreement or disagreement on this?

Agree	
Strong	7%
Mild	11
Disagree	
Strong	65
Mild	16
Total Agree	18
Total Disagree	81
No Opinion	2

Question 1(d): Fourth is the position that government should pass laws to compel all business firms and schools, colleges and universities to reserve a fixed percentage of entries – jobs – and management positions for minority groups and for women applicants. What is the degree of your opinion on this?

Agree	
Strong	12%
Mild	18
Disagree	
Strong	51
Mild	20
Total Agree	29
Total Disagree	70
No Opinion	1

For the purposes of comparison, we might refer here to an earlier Gallup question from 1977. It substantiates the hypothesis that Americans are reluctant to endorse a policy of pre-

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ferential treatment.

Question: Some people say that to make up for past discrimination, women and members of minority groups should be given preferential treatment in getting jobs and places in college. Others say that ability, as determined by test scores, should be the main consideration. Which point of view comes closest to how you feel about this matter?

	Favor Preferential Treatment	Favor Selection On Ability	No Opinion
Nationwide	11%	81%	8%
By Sex			
Men	10	82	8
Women	12	80	8
By Race			
Whites	9	84	7
Nonwhites	30	55	15

Source: Survey by the Gallup Organization, October 21-24, 1977.

It is interesting and significant that nonwhites as well as whites reject preferential treatment in favor of selection on ability. Though it should be noted that preferential treatment and ability are not strictly mutually exclusive, as could be inferred from the question, the results leave no doubt that the public as a whole favors selection on merit rather than through special consideration. Nonwhites, by a smaller but still significant margin, agree with that configuration. Moreover, when presented with Question 1(e) in the Sindlinger poll, the respondents distinguished between "catch-up" educational programs and what they clearly regarded as unfair preferential treatment. Three-quarters favored government catch-up programs in order to compensate groups which had suffered discrimination in the past. This compensation option evoked relatively little objection, especially when opposed to the results of later questions on straight preferential treatment.

Question 1(e): Finally, there is the position that there should be special government sponsored job training and educational "catch-up" programs reviewed for minority groups which have suffered from past discrimination.

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Agree	
Mild	34%
Strong	40
Disagree	
Mild	9
Strong	16
Total Agree	74
Total Disagree	25
No Opinion	*
(* = less than 1%)	

The picture of what the public wants in the way of government anti-discrimination programs that emerges from Questions 1(a) to 1(e) is very interesting. It appears that public opinion makes fine distinctions in the matter. Widespread support for anti-bias laws and government-sponsored "catch-up" educational programs is coupled with strong opposition to lowering of standards and quota systems to accommodate minorities. Four out of five people opposed the lowering of standards for the hiring of people by business and for admissions to higher education institutions and *two out of three were strongly opposed.* Seven out of ten people opposed a quota system for jobs and higher education admissions *with about half of all respondents expressing strong opposition.* In order to assist minority groups they regard as disadvantaged and suffering from the effects of past discrimination, Americans are prepared to diverge from stricter nondiscrimination – but only to the extent of providing special educational or training programs.

This impression is confirmed when the *Policy Review* survey turns to public knowledge of, and attitudes towards, existing affirmative action programs. Briefly, people objected to *de facto* reverse discrimination, that is, government programs which redounded to the benefit of a lesser-qualified minority or female applicant at the expense of better-qualified non-minority applicants.

Question 2(a): Under some recent U.S. Government programs – which were designed to help minority groups in jobs management positions and for higher education – it has happened that a minority person or a female applicant has been hired, promoted or admitted to an educational program like law school – with lower qualifications than non-minority applicants

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who were excluded. Are you aware of this?

Seventy-seven percent of respondents were aware that reverse discrimination had occurred. Twenty-three percent were not aware of it.

Question 2(b): To get your response to this question – I am going to give you four choices. Let me read each one before you reply.

ONE . . . It is fair 2%
TWO . . . It is unfair 19%
THREE . . . It is unfair but it is necessary to make up for the victims of past racial and sexual discrimination 17%
FOUR . . . It is unfair and the wrong way to make up for past unfairness 62%

These are surprisingly conclusive figures. Only 2 percent regard such programs as simply "fair." A full 81 percent felt that it is "unfair" in some sense to allow the less able minority or female applicant an advantage over the better qualified. Only 19 percent of respondents expressed any support for the idea of remedying the ills wrought by past discrimination if it meant sacrificing the idea of advancement by merit. And 62 percent of respondents condemned such affirmative action programs as both unfair and inexpedient.

Not only do people think that programs resulting in preferential treatment for minorities are unfair and the wrong approach, however, they also believe that such programs could actually harm rather than help attitudes toward minorities. When asked whether such situations reflected badly on all minority groups, or were likely to stir up resentments, nearly three-fourths of the respondents answered in the affirmative.

Question 3: With the situation developing where minority groups have received especially favorable treatment – do you regard such programs as likely to stir up resentment against the minorities. That is, does this have a bad reflection on all minority groups?

Yes	73%
No	23
Don't know	4

The Sindlinger summary added the interesting comment that

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monitering of the interviews had shown, in addition to the overall 3 to 1 margin, that many members of minority groups had expressed the belief that resentment would be a by-product of especially favorable treatment. Moreover, there is no difference of opinion between women who are among the beneficiaries of special treatment programs, and men on this matter. Yet, despite such an overwhelming margin of agreement on the resentment question, still more people professed that *their own attitudes* had not been affected. When reminded that government programs had sometimes resulted in less-qualified minorities and women being admitted into professions and schools, overwhelming numbers nevertheless say that minority or female doctors/lawyers are worth as much as others and they would not elect to avoid dealing with them, even if the avoidance could be accomplished without offense.

Question 4(a): This is our last question on minority and sexual discrimination: As we said — under recent government programs — minority applicants have sometimes been admitted to places of higher learning with lower standards than other applicants — and also a fixed number of college entrances and promotions have sometimes been reserved for minorities. For these questions — answer as yes or no or maybe . . . Has this affected your own attitude towards minority and women doctors and lawyers?

Yes	20%
No	76
Maybe	4

Question 4(b): Do you think the qualifications of a black lawyer or woman doctor are likely to be worth as much as those of other doctors and lawyers?

Yes	67%
No	17
Maybe	11
Don't Know	6

Question 4(c): If you could do so with without offense, would you, yourself, avoid dealing with a black doctor or a woman lawyer?

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Yes	11%
No	84
Maybe	5
Don't know	*

(* = less than 1%)

Again, these are remarkable findings. Despite their disapproval of apparent quotas and lower standards for minority admissions to professional school, three out of four Americans claim that their attitudes to minority and women doctors and lawyers have not been affected by these programs. Nearly seven out of eight respondents say that they would not avoid dealing with a black doctor or a woman lawyer.

Does the same favorable attitude extend to the professions themselves? When people were asked whether quota programs would damage the professions either in fact or in the eyes of the public, the majorities exonerating the professions from harm were slightly reduced but still substantial.

Question 4(d): Do you think that these programs will damage the legal and medical professions as a whole?

Yes	24%
No	63
Maybe	10
Don't Know	3

Question 4(e): Do you think that these programs will damage the reputations of the professions in the eyes of the public?

Yes	25%
No	59
Maybe	13
Don't Know	3

Perhaps there is no great significance in this comparatively small statistical difference. If we allow ourselves some speculative interpretation of Questions 3 and 4, however, we might guess that the majority of Americans will oppose affirmative action programs provided that they can do so without themselves expressing anything that seems like racial or sexist bias. Thus, more people are ready to criticize such programs as harmful to

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the professions than are willing to express doubts about the minority and women doctors and lawyers.

This brings us back to our starting point – namely, that affirmative action can be viewed as a subject not concerned with race. This gains considerable support from the *Policy Review* survey. Another important finding, which confirms the arguments of Messrs. Lipset and Schneider, is that there is substantial majority support for "catch-up" educational and training programs – in sharp contrast to the overwhelming rejection of quotas or preferential treatment through lowered standards. What is less clear from the survey is the exact degree to which the public objects to government programs as such and to what extent its opposition is to the *principle* of preferential treatment. But this becomes immaterial when we see how strongly people oppose any guarantee of result other than simply opportunity.

So the government can find little encouragement in public opinion to embark on further activity which seems to conflict or interfere with meritocratic values. The results of the *Policy Review* survey confirm a public willingness to provide minorities with a starting point on the inside lane, but a belief that ultimately the race must go to the swift.

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Loading the Economy

ORRIN HATCH

> It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.
>
> Paragraph 703(d) of Title VII of the 1964 Civil Rights Act.

The spread of affirmative action since the passage of the Civil Rights Act in 1964 has been an event without precedent in American history. With astonishing speed, federal and state agencies have asserted the right to impose racial quotas on virtually every area of American life. Even a tiny academic institution like Hillsdale College in Michigan, with a faultless tradition of social progressivism and an established policy of refusing federal monies, is menaced on the ingenious grounds that, since some of its students get veterans' benefits, it is in receipt of federal funds.[1] All of this is in flagrant breach of the letter and the spirit of the Civil Rights Act, as specifically established in congressional debate at the time of its passage. The legalistic casuistry indulged in by the liberal plurality on the Supreme Court in order to give at least limited endorsement of affirmative action in the *Weber* case has not unreasonably been described as "the most horrendous decision in U.S. Supreme Court history since the Dred Scott case"[2] (by Professor Sidney Hook), as a violation of the separation of powers (by Chief

1. "H.E.W.-ing at Hillsdale," *Regulation*, Jan./Feb. 1979. The case is currently under appeal.
2. *Measure*, Sept./Oct. 1979, p. 1.

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Justice Burger) and as "Orwellian" (by Justice Rehnquist)[3]. More significant still, affirmative action is a reversion to a society of status from the ideal of a society of free contract, equal protection and individual freedom which inspired the framers of the Civil Rights Act and ultimately of the American Republic itself.

The legality, or otherwise, of affirmative action will keep lawyers employed for many years. Cultural historians (and possibly psychologists) will make reputations explaining the reluctance of press and politicians to oppose its development, or really to notice that it was going on at all. However, since affirmative action is indeed going on, without benefit of law or legislators, a more immediate concern ought to be what its practical effect is likely to be. Typically, this turns out to be the least studied aspect of all.

Some economists have done work on the effects of affirmative action upon the relevant "protected class."[4] This has generally been pessimistic. Such evidence as is available suggests that the programs fail, either because of absolute lack of candidates, or extensive changes and other factors in the economy, or high attrition rates. Intuitively, we might suppose the effect would be similar to tariffs, inducing a local and relative prosperity at the expense of overall welfare. This prosperity would probably be less in absolute terms than might have been the case if the economic system had been permitted to work freely. But a recent survey by the Library of Congress was unable to discover anything substantial from academe on its overall or macroeconomic impact. In fact, the major empirical study was done as part of a survey of all government regulation by public accountants Arthur Andersen & Co. for the Business Roundtable;[5] and the most helpful theoretical discussion of regu-

3. Justices Burger and Rehnquist's dissents to *Weber*, both of unusual ferocity.

4. Andrea H. Beller, "The Economics of Enforcement of an Antidiscrimination Law: Title VII of the Civil Rights Act of 1964," *Journal of Law and Economics*, Vol. 21, Oct. 1978; and the work of Thomas Sowell of UCLA.

5. *Cost of Government Regulation*, "Study for the Business Roundtable: A Study of the Direct Incremental Costs Incurred by 48 Companies in Complying with the Regulation of 6 Federal Agencies in 1977," Arthur Andersen & Co., March 1979.

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lation was published by an arm of the American Management Association.[6] As far as I can tell, all recent Ph.D. theses on the subject have concentrated on its sociological or educational aspects, or on the effect on the "protected class." Considering how large affirmative action looms on the campus (see below), this is a distinct case of the dog that didn't bark in the night. It can only darken the suspicions of those already depressed by such news items as the plans of Ohio State University officials to buy their own airliner, because enough of them make lobbying trips to Washington to fill three flights a week.[7] However, given this absence of academic interest, perhaps a U.S. Senator might at least growl in the direction of affirmative action's economic impact, and the questions such a study would raise.

Quotas or Bust

Because most people would rather not think about affirmative action, there is considerable confusion about what it means, not unrelated to the frantic logic-chopping indulged in by its proponents when under pressure. For my present purposes, I want to emphasize that *affirmative action means quotas* or it means nothing. It means discrimination on the basis of race and sex. It does not mean remedial education, special programs for the disadvantaged, or any of the other methods by which we could, and to some extent do, help minorities. It has nothing to do with equal opportunity, although its chief enforcement agency is misleadingly called the Equal Employment Opportunity Commission (EEOC). Affirmative action is about equality of results, statistically measured. Its proponents have made great efforts of casuistry to distinguish between quotas and "goals," "targets," "timetables," and so on. All such distinctions dissolve in practice, particularly when the enforcers are feeling confident about the balance of power

6. Murry L. Weidenbaum, *The Future of Business Regulation: Private Action and Public Demand* (New York: American Management Assoc., 1979). Professor Weidenbaum, admittedly, is Director of the Center for the Study of American Business of Washington University in St. Louis.

7. *Toledo Blade*, Feb. 16, 1980. Ohio State University receives some $63 million in federal aid each year.

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on the Supreme Court.[8]

One example makes this point irrefutable. In 1973, American Telephone & Telegraph signed a consent decree including substantial affirmative action programs. This pioneer in the employment of women had been backed up against a wall by the EEOC solely because the paucity of women in its higher reaches was regarded as *prima facie* evidence of discrimination. A.T. & T. didn't agree, but it didn't want to take on the federal government in a long court battle either, so it tried to compromise. The targets it tried to meet were of a volume and complexity to delight a bureaucrat's heart. In 1975, the federal government announced A. T. & T. wasn't doing well enough, and made it sign a "supplemental order."

> The sternness of the government's approach to the supplemental order convinced A.T. & T. that it was dealing not with goals, as it had previously assumed, but with quotas (a proposition some government people involved do not concede). Says Don Liebers [the A.T. & T. executive concerned]: "The order made it rather clear that the name of the game was achieving targets."

After that, A.T. & T. became a superachiever. . .[9] Anyone temporarily confused by the affirmative action lobby's shell game should ask himself: Am I supposed to take notice of race, sex, etc.? Or not? He will find the answer (yes, on our terms) nowhere appears in the Civil Rights Act. It is the economic impact of this answer that is the subject of this article.

How the Market Erodes Discrimination

The concept of a free market is valuable not simply as a description of reality, but as an analytical tool. It helps us put discrimination in context. In a system where all actors are free to pursue their own interests, there is an inexorable tendency

8. Which is pretty confident. Joseph L. Rauh, Jr., in "The Supreme Court: A Body Politic," *The Washington Post*, March 5, 1980, comments on the term " 'Equal protection of the laws.' . . . The issues of . . . preference of blacks in jobs . . . are hardly resolved by reference to those five little words, and the Justices quite naturally apply their own ideologies."

9. Carol J. Loomis, "A.T.& T. in the Throes of 'Equal Employment,' " *Fortune*, Jan. 15, 1979.

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for everyone to receive the marginal value of his labor. In other words, you will ultimately be paid approximately what your work is worth. The free market undermines all distinctions that are not based on this economic reality. If you belong to some unpopular group, employers may begin paying you less than average, as a matter of tradition. But precisely because they will make more money off you than off more popular but expensive groups, you will come into demand, and your wages will be bid up. Ultimately, you will be paid the average, or even more than that if you happen to be more efficient. The only way this can be prevented is if the state legislates unequal wages or bans you from certain occupations, as has happened in South Africa. Private employers cannot effectively do it, because their attempts at collusion are undermined by market forces just as their attempts to form cartels collapse, unless supported by public policy, tariffs or some other constraint on freedom. *Discrimination is costly*. That is why the South African business community is generally critical of *apartheid*.

Two qualifications must be made, however. First, there is no reason why your marginal value should be the same as that of anyone else. Even apart from any question of innate aptitude, different cultures have different attitudes to work and leisure. If you regularly spend the summer living on a beach in Yucatan, your earning capacity will be outpaced by your brother who works and goes to night school all year round, although you might be happier. Secondly, even when your marginal value is the same, it may take time to get paid it. Traditions do not dissolve overnight, although experience in America indicates that where money is concerned, they erode remarkably quickly.

In fact, the American experience is that relying on the market system has been enormously successful in integrating diverse groups, often historically hostile to each other. Groups frequently subjected to majority disapproval, such as Jews and Asians, have nevertheless emerged with incomes significantly above the average. The cash nexus is a noble thing. You don't have to like the man who mends your shoes, but you and he can exchange goods and services to your mutual advantage. The pursuit of material gain has so remorselessly worn down all social distinctions that, for example, the position of women in American life had already been revolutionized, seen in a longer perspective, before the EEOC sprang forth.

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The point of the 1964 Civil Rights Act was merely to hurry this process along, particularly in the area of race, by forbidding certain types of public discrimination. The philosophy behind it was that, once entry to the market was freed of artificial constraints like institutionalized discrimination, it would solve this problem as it had all others.

If you leave people alone, they will tend to employ those who do the best job, and the overall production of wealth will be maximized. But if you don't leave people alone, they cannot do this, and inefficiencies will develop. Wealth will not be maximized. This is exactly the effect of affirmative action.

The Independent Immigrant

Even Massachusetts Institute of Technology Nobel laureate Paul Samuelson, father of the famous textbook, missed this point in commenting on the Bakke decision. Professor Samuelson compared the arrival of blacks on the labor market with the arrival of immigrants in the nineteenth century. Immigration was opposed by "charter-member Yankees," he said, because they were afraid of losing their jobs. But in fact

> . . . the economic system . . . is *not* a zero-sum game. . . When a country gains new manpower from the excess of births over deaths or from immigration and increased female participation, its same land and complement of capita assets can produce a larger pie . . . Neither the "poor whites" nor other groups in the community have to fear particularly that out of *their* economic hides will have to come any advance achieved by black Americans, native Indian Americans, Americans of Mexican descent or other minority groups.[10]

This is wrong, even on its own terms, as a defense of affirmative action. "Poor whites" had excellent reasons to fear that they would be undercut in the short run. In the long run, as Professor Samuelson might normally argue, echoing Lord Keynes, we are all dead – although overall welfare will indeed expand. But more important, the U.S. absorbed the great wave of immigration at the end of the last century because the immi-

10. Paul A. Samuelson, "Economics of Discrimination," *Newsweek*, July 10, 1978.

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grants were employed in the sectors of the economy that needed them – often concentrated at first in the least desirable areas. Under affirmative action, however, the newcomers would be inserted into each area of activity in proportion to their overall numbers, and not because of their skills or because they represent a more efficient use of resources. (This is literally what is happening with the Spanish-surnamed protected class, whose numbers are currently increasing through substantial legal and illegal immigration.) In these circumstances, we cannot be sure that "new manpower" would produce a "larger pie." It might, as we shall see, produce a smaller pie as well as denying some people jobs they might otherwise have occupied. It would be more accurate to look at affirmative action as a tax, whereby resources are transferred directly to the protected classes. But it is a peculiarly debilitating tax, because it interferes with the productive enterprise's ability to take decisions by reducing its internal efficiency. Most taxes are a burden to be shouldered. This one is also an enfeebling drug.

Inefficiency in Triplicate

The true nature of affirmative action can be seen in one of the rare reports from the front line, which appeared in the *Washington Star*, albeit in the Business & Finance section:

> Dante DiGaetano's business is so small that he has no office and no secretary – just one carpenter and two laborers.
>
> But the Labor Department has ordered him to take a series of 43 continuing administrative actions which could occupy a sizable office force because, under a recent government contract, 5% of the four laborers working for him and his subcontractors were not women.

As usual, Mr. DiGaetano had signed a conciliation agreement rather than abandon his contract or fight the government in court.

> As a result of signing the order, DiGaetano has been ordered to maintain a written equal opportunity policy, appoint an EEO officer with a written job description, include EEO policy in company manuals, maintain records of encouragement of minority and female employees to seek promotion and keep a record of annual reviews by those employees for promotional opportunities.

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He must also keep a current listing of recruitment sources for minority and female craft workers, copies of letters to employment groups specifying employment opportunities, files of all responses to these letters and records of contacts with minority and women's community organizations, recruitment sources, schools and training organizations.

Further, DiGaetano must have copies of newsletters and annual reports that include EEO policy, copies of letters to unions and training programs requesting assistance in meeting EEO duties, copies of letters sent at least every six months to all recruiting sources stating EEO policy and copies of advertising with EEO statements.

In addition, the conciliation agreement stipulates that he must maintain records that parties and picnics have been posted and are open to all employees, have separate toilets and changing facilities for male and female employees and provide documentation that all foremen maintain a working environment free of harassment.

On top of this, DiGaetano must submit a monthly "employment utilization report," a quarterly report on minority and female applicants, job offers, new hires, terminations and layoffs and a report stating the date upon which each of the other 42 requirements was met.[11]

My colleague, Senator Richard S. Schweiker of Pennsylvania, complained to Labor Secretary F. Ray Marshall about this situation. Mr. Marshall replied that Mr. DiGaetano had only himself to blame. He hadn't submitted his "monthly Employment Utilization Reports, Form CC257." Mr. Marshall added that although this case was unusual, it was too difficult on administrative grounds for his agents to take note of the size of their victims.

A society which allows this sort of harassment is, in an important sense, no longer free. Beyond that, it is not even efficient. Obviously, the heightened threshold of fixed costs is going to exclude smaller contractors from such fields. But the impact on the major contractors is perhaps worse. They survive, but waste much of their assets on bookkeeping, and other com-

11. *Washington Star*, Feb. 21, 1980.

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pliance activities. Additionally, they are no longer dedicated to the pursuit of profit, with its continuous, systematic pressure against waste and error. This is partly because they are now staffed by people who, by definition, are not the ones who would have been selected had the principle of merit been applied. Also, the whole ethos of the organization has been altered, from commerce to politics. We are witnessing a cultural conquest of the corporate sector by the bureaucracy. And for future developments, we need look no further than the bail-out last fall by Congress of the Chrysler Corporation. Congress here chose to support a failing corporation, and thus perpetuate a concomitant misallocation of resources throughout the economic system, in large part because the bureaucracy felt that the corporation had complied with its regulations and was a "good corporate citizen." One frequently-used argument was that Chrysler was a major employer of minorities. Thus we are intervening to foster inefficiency, and intervening yet further when its consequences become unavoidable. It looks ominously like what the Victorians called the Primrose Path.

An Economic Impact Statement

Measuring the economic impact of affirmative action regulations is easier than that of (say) the Environmental Protection Agency's activities because they are clearly a form of consumption. The EPA is often justified on the grounds that its regulations merely bring home to the economic decision-maker the "social costs," or "externalities," that the price system fails to detect. These include the cost to the community of washing the soot from factories out of its hair and so on. The concept is debateable, but it does not concern us here. The EEOC has sometimes been credited with opening up new pools of labor that corporations somehow contrived to ignore, and occasionally with hastening the breakdown of traditional barriers to labor mobility. But in the context of the market's endless search for efficiency, these anomalies would have been eliminated anyway, leaving only the question of whether they were worth the expenditure compelled by law. Affirmative action is a net cost to the economy. On the whole, its advocates have defended their policies in terms of social justice. And this is a more reasonable position. No one, after all, expects the state to profit from the money it expends on looking after the aged.

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Measuring the costs of regulation is not an easy task. In the case of Dante DiGaetano, for example, it is possible to quantify the incremental expenditures he is now forced to make – hiring an EEO officer, secretaries, posting letters, and so on. It is more difficult to assess the changes in his way of working – including the time he himself must divert from other activities. And the true dynamic effects – the opportunity cost of all this expense and effort, the diminution of competition, inefficiencies due to the employment and promotion of marginal labor and the consequent demoralization of good workers – can only be a matter of conjecture, although they are clearly the most important of all. No measurement can be made, for example, of the cost to the entire economy of a decision not to terminate a bad worker because he or she belongs to some category required to satisfy government inspectors, a near-universal phenomenon in contemporary America. It is safe to say, however, that the dynamic effects of affirmative action are some considerable multiple of the static costs.[1 2]

Unearned Increments

The Arthur Andersen study resolved this problem by counting only such incremental costs as could be exhaustively documented. Under this minimal definition, the 48 companies which were examined proved to have spent some $217 million to comply with EEO regulations in 1977. The greater proportion of these, some 96%, were operating and administrative costs which recur annually. The companies noted that the full impact of treating the handicapped as a "protected class" had not yet

12. This three-fold division follows Weidenbaum, *op. cit.*, pp. 11-33. Arthur Andersen combined the second and third category as follows:

INCREMENTAL COSTS	(Measured in Study)
COSTS OF SECONDARY EFFECTS NOT MEASURED IN STUDY	Loss of Productivity Investment Disincentive International Competitiveness Lost Opportunity Construction Delays Inflation Resource Misallocation Shortage of Supplies

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been felt in 1977.[13]

Since these 48 companies represent only 5% of the U.S. workforce, excluding military, government and agricultural employees, it would be logical to conclude that costs across the entire sector are $217 million x 20 = $4.34 billion. Any shortfall resulting from the crudeness of this measure is amply compensated by the fact that it does not include the effect of state and local government demands, or specialized federal activities such as the fair housing laws.

The figure is also not inconsistent with the estimate made by Robert DeFina of the Center for the Study of American Business at Washington University in St. Louis that compliance costs are approximately 20 times the cost of the regulatory agency concerned.[14] In 1979, the federal government estimated it spent $135.5 million overseeing "private sector equal opportunities" and a further $15.2 million in partial administration of the fair housing laws, suggesting a total compliance cost of at least $3 billion. Estimated expenditures for 1981 are some $210 million, for which compliance costs could be $4.2 billion.

The federal government's estimate of its 1979 expenditures on overseeing and complying with its own equal opportunity regulations was $170.4 million, with an additional $39.7 million for military equal opportunity. The figures for 1981 are expected to be $194.9 million and $42.9 million.[15]

This is substantially less than the estimate of affirmative action costs that the Congressional Research Service arrived at in 1976 by polling selected government agencies – $367 million.[16] These, of course, by now would be substantially higher. The reason for the discrepancy probably lies in accounting definitions, with the government now taking a far

13. *Cost of Government Regulation*, Arthur Andersen & Co., March 1979.

14. Robert DeFina, *Public and Private Expenditures for Federal Regulation of Business*, Working Paper No. 22 (St. Louis: Washington University Center for the Study of American Business, 1977). Also, Weidenbaum, *op. cit.*, pp. 21-22.

15. *Special Analysis: Budget of the United States Government, Fiscal Year 1981* (Washington, D.C.: Office of Management and the Budget).

16. "Costs of Affirmative Action In Employment," Congressional Research Service, Library of Congress, April 1976.

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more restrictive view than did the individual agencies. An arithmetical exercise performed on the military budget, for example, appears to imply that the 5,000 persons, who have graduated from something called the Defense Equal Opportunity Management Institute in the last eight years, are serving their country at a cost, in salaries and support expenditures, averaging something less than $8,000 a year. Patriotism, clearly, is not dead. In fact, given the military's remarkably low estimate of its 1980-1981 increase in expenditure on Equal Opportunity — a mere $1,200,000 — we can assume that civilian control at least over military statistics is pretty healthy, too.

The costs of affirmative action to state and local governments remain an unexplored continent. In 1976, the Congressional Research Service's intrepid analyst attempted to estimate the costs of federally-mandated programs in this area by asking selected states directly. Unsurprisingly, the results were rudimentary, but they suggested nationwide 1976 costs of approximately $185 million. This is a tribute to the impact of the Bureau of Intergovernmental Personnel programs, which produced this formidable effect for an outlay of only $325,000. No information is available on the cost to the states of their own regulations.

There seems to have been no estimate of the costs to colleges and universities since the American Council on Education published one in October 1975 for six selected institutions.[17] It said the cost was $1,800,000. Extrapolating across the 250 colleges and universities that, according to HEW, had affirmative action programs in April of 1975, the Congressional Research Service concluded that the total 1974-5 cost had been $75 million. In 1979, the federal government estimated that it had spent $14.8 million on "equal educational opportunity," which includes oversight of employment policies. Interestingly, this sum will rise to an estimated $40.7 million in 1981.

This still leaves areas of the economy unassessed. Perhaps the most notable is that of primary and secondary education, where random inquiries suggest affirmative action is at least as much a priority as in the federal bureaucracy. Still, what we have is

17. "The Cost of Implementing the Federally Mandated Social Programs at Colleges and Universities," *American Council on Education*, June 1976.

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enough for a consciously-low estimate:

Private sector — Arthur Andersen/Hatch, 1977	$4.3 billion
Federal govt. — Actual 1979	.35 billion
State and Local govt. — CRS estimate, 1976	.18 billion
Universities, Colleges — CRS/ACE estimate 1974	.08 billion

Considering the partial and dated nature of these figures, the fact that inflation in the four years of President Carter's Administration seems likely to average nine percent a year and the dramatic proliferation of programs of affirmative action in recent years, its incremental cost must be clearly in excess of $5 billion — perhaps as much as $7.5 billion.

It is essential to remember at this point that *$5 - $7.5 billion is only the tip of the iceberg*. It is just the incremental cost of compliance — what Dante DiGaetano pays to satisfy his official tormentors. The full economic cost is the better use Mr. DiGaetano could have put his time and money to, the demoralizing effects on his workers and himself, the chances that workers hired under the new regime may not be as productive, the loss of wealth represented by the exclusion of skilled workers, the possibility that he may give up in disgust and apply for a job in the Department of Labor, and so on. This will be many times higher, if inherently less quantifiable.

Affirmative action is yet another wedge driven between the American worker and the fruits of his labor. The most obvious wedge is that proportion of the fruits comandeered in the shape of direct and indirect taxes. Affirmative action certainly contributes to this because of the expensive oversight apparatus that accompanies it. But a less obvious wedge is the inefficiency it induces in the productive base. This means that an hour of work yields less fruit. Instead it is spent getting wrong numbers on the telephone system, and hunting for lost mail. Where the worker faces a high marginal tax rate, quite small changes in return can make him decide to go fishing instead. This is exactly what is happening to the American economy.

Since 1973 particularly, there has been a drop in American productivity growth that cannot be explained in terms of the changing combination of capital and labor input.[18] In real

18. Denison, "Explanation of Declining Productivity Growth," *Survey of Current Business*, August 1979.

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terms, national income per person employed in the first half of 1979 was below that of 1973. The most obvious culprit is the distortion and misallocation effect caused by complying with federal regulations. Affirmative action is only a small part of this – Murray Weidenbaum estimates that total incremental cost of oversight and compliance in 1979 was some $102.7 billion.[19] But since it has such a personal impact on the labor force, its dynamic economic impact is probably out of proportion. One can work happily designing a pollution filter, but not if passed over for a promotion on the grounds of race. In any event, affirmative action is a symbol and a symptom of the regulatory socialism which, sprouting with the New Deal, has grown like a kudu vine until our institutions and their classical liberal inspiration are on the point of vanishing from sight.[20]

Perhaps the best way to look at affirmative action is to regard it as a "rent-seeking" activity, of the sort described by Gordon Tullock.[21] Rent-seeking is the process by which individuals and groups attempt to get society at large to pay them a subvention. Professor Tullock has demonstrated that most societies in history have been organized in this way. Government officials and their clients exact income in the form of salaries, bribes and the proceeds of government-sponsored concessions and monopolies. Everyone else invests time and money in evading them – "rent avoidance." Professor Tullock gives an example of an entrepreneur in a developing country who knew nothing of the production process in his factory because his time was best spent negotiating with, and paying off, various functionaries. Without (as yet) the venality, the same process is, according to him, under way here. It is significant that Du Pont Corporation has recently found it desirable to appoint as chief executive a lawyer specializing in government negotiations and public relations instead of a chemical engineer. Some of

19. Weidenbaum, p. 22.

20. Theodore Lowi, *The End of Liberalism* (New York: W.W. Norton, 1969).

21. Gordon Tullock, "Rent Seeking," Working Paper No. CE 78-2-8; and "The Backward Society: Static Efficiency, Rent Seeking and the Rule of Law," Working Paper No. CE 78-7-1, Center for the Study of Public Choice, Virginia Polytechnic Institute.

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his time will probably be spent negotiating with EEOC officials about the amount of income to be redirected from Du Pont workers and stockholders to whatever groups are politically important enough to be designated "protected classes." The actual making and selling of chemicals somehow gets shuffled lower and lower in his In tray. From an economic standpoint, it would be better to pay the $5 billion out in undisguised grants.

ERRATUM

In E.G. West's article "The Unsinkable Minimum Wage" (*Policy Review* #11, Winter 1979; pp. 83-95), a graphic table was unintentionally omitted. With our apologies to Professor West and to our readers, Table One (see pp. 88-89) is reproduced below.

TABLE 1

CHARACTERISTICS OF LOW WAGE WORKERS 1975

Characteristics by Year	All Hourly Wage Employees	Hourly Wage		
		Less than $2.00	$2.00-$2.49	$2.50 or more
Teenagers (16-19) 1975				
Percent of total	100.0	15.4	51.4	33.2
Percent in each wage interval				
Working part-time	63.8	84.0	72.5	41.1
Students	43.4	65.0	49.5	23.9
Female	46.2	61.4	50.3	32.7
Black	6.4	6.3	7.1	5.5
Family income exceeds $15,000	41.8	32.7	52.2	30.0
Persons Aged 65 or Over 1975				
Percent of total	100.0	18.8	44.6	36.6
Percent in each wage interval				
Working part-time	73.4	89.9	84.5	51.4
Female	41.2	47.7	45.7	32.5
Black	6.5	4.5	8.5	5.2

Source: May Current Population Survey, individual records.

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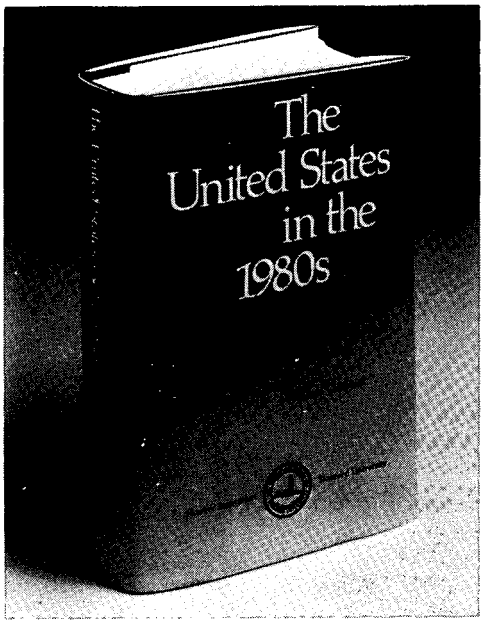

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Twisting the Law

NICHOLAS CAPALDI

The moral that many would have us draw from the incident at Watergate is that government power can be abused, especially by unprincipled individuals. But there is another kind of abuse of government power: an abuse practiced by a group, not an individual, and based upon high principles.[2] Nowhere is such abuse more in evidence than in the development and application of the policy of affirmative action. We begin with two titles of the Civil Rights Act of 1964, known as Title VI and Title VII. Title VI prohibits discrimination in public accommodations and in federally assisted programs. This includes federally assisted education programs. Title VII prohibits discrimination by employers or unions, whether private or public.

In the most unequivocal fashion, the sponsors of the measure in the Senate made clear that this act was designed to foster equal opportunity, not preference and not racial balance. Listen to the words of Senator Hubert H. Humphrey: "Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group."[3] Senator Harrison A. Williams reaffirmed this when he said: [Title VII] "specifically prohibit(s) the Attorney General or any agency of the government, from requiring employment to be on the basis of racial or religious quotas. Under (this provision) an employer with only white employees could continue to have only the best qualified persons even if they were all white."[4]

In the ensuing debate, the floor managers in the Senate, Senators Joseph Clark and Clifford Case, both stated that:

1. This paper was written during my tenure as a national fellow of the Hoover Institution at Stanford Univeristy. I owe special thanks to Sidney Hook, Jack Bunzel, Paul Seabury, and Miro Todorovich.

2. Namely, the belief that oppressed peoples are victims of circumstances beyond their control, and this dictates that government must intervene to liberate them.

3. Humphrey (110 *Cong. Rec.* 12723).

4. Williams (*ibid.*, 1433).

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"It must be emphasized that discrimination is prohibited as to any individual. . . . The question in each case is whether that individual was discriminated against." Further, in response to the charge that the bill would ultimately require quotas, Senator Clark replied that: "Quotas are themselves discriminatory."[5] Two provisions were added to spell this out:

> 703 (h) . . . it shall not be unlawful employment practice... for an employer to give and act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. . . .
>
> 703 (j) Nothing contained in this title shall be interpreted to require any employer. . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number of percentage of persons of any race, color, religion, sex, or national origin employed by any employer. . . .

Once a law is passed, it is the responsibility of the executive branch of government to see to its faithful execution. As the power of the federal government has grown, a vast bureaucracy has been established to aid in the administration of the laws. In addition to the potential conflict between a specific piece of legislation and the Constitution, there are two other kinds of conflict. The President may have his own understanding of the legislation in opposition to the Congressional understanding, and the bureaucracy may have its own understanding of the legislation in opposition to either the Congress or even to the President.

The President's interpretation of the law and his directives to the bureaucracy are found in so-called executive orders. In response to the Civil Rights Act of 1964, President Lyndon Johnson issued Executive Order No. 11246 in 1965, stressing the need for "affirmative action"[6] with regard to minorities.

5. Clark and Case (*ibid.*, 7213, 7218).

6. The very first use of the phrase "affirmative action" goes back to the Labor Relations Act of 1935. It required employers who had engaged

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But the executive policy of affirmative action was not defined by the President; it was left to the bureaucracy. In May of 1968 the Department of Labor defined affirmative action in Order No. 4.

> A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time-tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in his affirmative action compliance program a table of job classifications. . . . The evaluation of utilization of minority group personnel shall include. . . an analysis of minority group representation in all categories.[7]

Additional guidelines were issued on February 5, 1970. Affirmative action was further defined as "a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith." Finally, the guidelines issued on December 4, 1971 spelled out the ultimate logic of the concept. It all turned on the key term "underutilization."[8]

> "underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. . . .

In short, anything less than a racially balanced workforce would bring down the wrath of the government.

in anti-union acts of intimidation to notify employees that those acts were illegal and discontinued. The first relevant executive order, No. 8802, was issued in 1941 by F.D. Roosevelt, ordering an end to discrimination in defense industries. In 1961, President Kennedy issued executive order No. 10925, prohibiting job discrimination among contractors doing business with the Federal Government. In that order he used the expression "affirmative steps" to direct contractors to actively recruit and encourage minority participation.

7. Order No. 4 (Title 41, *C.F.R.*, 60-1.40).
8. Underutilization (41, *C.F.R.*, 60-2.11).

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What needs to be emphasized here is that affirmative action originated in the executive branch of government, not the legislative branch; that affirmative action as formulated by the Department of Labor and enforced by HEW and EEOC (Equal Employment Opportunity Commission) is a direct violation of the legislative intent of the Civil Rights Act of 1964; that underutilization, goals, timetables, and quotas are not solutions to legislatively formulated problems but bureaucratic policies for which a problem must be fabricated. Affirmative action is a solution in search of a problem.

How the Bureaucracy Sees Itself

From time to time various units of the federal bureaucracy concerned with administering the Civil Rights Act of 1964 issue statements in an attempt to explain their position. One such document was issued by the U.S. Commission on Civil Rights.[9] Its introduction begins with the statement of a problem. The problem, it seems, is the existence of a *gap* between blacks and whites, a gap reflected in statistics about income, income trends, and the proportional representation of blacks to whites in positions of high status.[10]

Why is this gap a problem? It is a problem for two reasons. First, it violates an operative ideal of our society. The ideal is supposed to be for a classless society in which no invidious comparisons could be made or found statistically. The second reason is that the gap is the effect of past injustice. It is presumed that it is coincidentally the case that the ideal reflects what would naturally have been the case in the absence of injustice.

> The aspiration of the American people is for a "color-blind" society, one that neither knows nor tolerates classes among citizens [Justice Harlan's dissent in the *Plessy vs. Ferguson* case of 1896]. . . . the test of affirmative action programs is whether they are well calculated to achieve these objectives . . . . we believe that affirmative action . . . including those where numerically based remedies have

9. U.S. Commission on Civil Rights, *Statement on Affirmative Action*, Oct. 1977. Clearinghouse Publication S4. This document reflects the consensus among several departments, most notably EEOC and the Office for Civil Rights, U.S. Department of Health, Education, and Welfare.

10. *Ibid.*, pp. 1-2.

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> been employed, meets this fundamental standard. . . . affirmative action programs will help us to reach the day when our society is truly colorblind and nonsexist because all people will have an equal opportunity to develop their full potential and to share in the effort and the rewards that such development brings.[11]

Given the foregoing definition of the problem, we can see why the solution of affirmative action was adopted. Affirmative action is "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future."[12] The solution will be considered a success when it will have placed "eligible minority members in the position which the minority would have enjoyed if it had not been the victim of discrimination."[13]

EEOC is telling us that whoever wills the end wills the means. The end is to terminate discrimination. But discrimination, says EEOC, cannot be terminated unless its effects are also terminated. One goal has here been substituted for another. Congress did not order the termination of the effects of discrimination: it outlawed discrimination *per se*. If anyone still doubts this, then listen to the words of Representative Celler, Chairman of the House Judiciary Committee and the congressman responsible for introducing the legislation:

> It is likewise not true that the Equal Employment Opportunity Commission would have power to rectify existing "racial or religious imbalance" in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped.[14]

11. *Ibid.*, p. 12.
12. *Ibid.*, p. 2.
13. *Ibid.*, pp. 7-8. This is a quote from *Rios v. Steamfitters Local 608*, 501 F.2d at 631-32.
14. Celler (110 *Cong. Rec.* 1518).

Two subsequent attempts were made in Congress to clip the wings of bureaucratic abuse. In 1976, the House passed an amendment to an education bill which specifically prohibited the HEW secretary from requiring "the imposition of quotas, goals, or any other numerical requirements on the student admission practice of an institution of higher edu-

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Finally, nowhere does anyone specify how there can be an objective, non-ideological determination even of what the effects of discrimination were and are.

The Bureaucratic Imperative

How is EEOC going to justify its seeming distortion of the act of Congress? It will do so by appealing to the acts of the judicial branch of government. According to EEOC, what we are witnessing is "the evolution of equal employment law."[15] Now evolution by itself simply means change through time. But for EEOC the development is in a special direction, and that is what makes it teleological.[16] "What was not fully apparent in 1964 was the magnitude of the effort that would be required to create genuine equality of opportunity and the specific measures needed to accomplish the task."[17] I take it that equal opportunity is "genuine" when it achieves the ideal: racial balance, statistical parity, or realignment.[18] Finally, it appears to be EEOC's notion that law evolves in the courts and in the bureaucracy.

cation. . . receiving Federal funds." The Senate balked but went along with a compromise measure specifically addressed to the benign torture of holding up money.

In 1977, the House tried an even stronger provision but the Senate rejected it altogether. Congress has two houses, one of which (The House) is opposed to realignment, and one of which (The Senate) condones it. It is no coincidence that the more democratically representative House is opposed, while the less democratically representative Senate is in favor or at least not opposed. The moral of this story is that it is easier to make a law than it is either to unmake it or prevent its abuse. (123 *Cong. Rec.*, 6106).

15. *Statement on Affirmative Action*, p. 2.

16. In the first chapter of *Affirmative Discrimination*, Nathan Glazer discusses the problem of liberal disagreement over the "direction" of legislative history.

17. *Statement on Affirmative Action*, p. 1.

18. Thomas Hobbes introduced the idea that life is a race. This is the origin of liberal teleology. President Johnson's "Shackled Runner" speech (1965) expressed the notion that social engineering can restore each runner to the place he would have had, absent external constraint. This is what is meant by *realignment*. When running for the presidency in 1968 Humphrey also came out for "equal results" and "taking race into account."

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EEOC cites three main cases to support its interpretation. The first is the so-called "Philadelphia Plan." The construction trades in Philadelphia were all-white, largely the result of father-son practices in the union. The Department of Labor, in 1969, ordered an end to that practice and instituted goals and timetables for minority recruitment. This was the first major application of Order No. 4. The Contractors Association of Eastern Pennsylvania challenged Order No. 4 on the grounds that Title VII bans discrimination, and the goals and timetables of Order No. 4 are discriminatory quotas. In the federal court, the Third Circuit Court of Appeals, the Secretary of Labor was upheld. Moreover, Judge John Gibbons seemed to endorse the notion of realignment.

> Clearly, the Philadelphia Plan is color-conscious. . . [in order to reject it we] would have to attribute to Congress the intention to freeze the status quo and to foreclose remedial action [to] overcome existing evils.[19]

The U.S. Supreme Court refused to hear an appeal. EEOC cites this case and others from the federal courts to establish that "goals and timetables [have] been repeatedly upheld by the courts."[20]

The Third Circuit Court handed down its decision in 1971. The other two cases were also in 1971. This explains the force of the 1971 guidelines and the use of the concept of underutilization. In the case of *Swann v. Charlotte-Mecklenburg Board of Education*, the U.S. Supreme Court concluded that local communities could voluntarily (that is, on their own initiative) assign students by race for educational purposes even where no prior *de jure* segregation existed. EEOC concluded from this that the Supreme Court was upholding realignment.

> The Supreme Court has given broad scope to the States in taking voluntary action to promote equality, even when the action is race conscious and is not explicitly designed to remedy a constitutional wrong.[21]

The watershed case in EEOC's tale of the evolution of equal employment law is supposed to be the 1971 case of *Griggs v.*

19. Quoted from *Times*, (July 10, 1978), p. 25.
20. *Statement on Affirmative Action*, p. 6.
21. *Ibid.*, p. 11.

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Duke Power Company wherein the U.S. Supreme Court interpreted Title VII as forbidding the use of an aptitude test and the requirement of the North Carolina power company that employees have a high school diploma even if there was no intent to use these as discriminatory. Minorities failed the test disproportionately, presumably because of previous educational deprivation. EEOC interprets this decision not only as endorsing its hypothesis of discriminatory effects but as endorsement of realignment. It is in their eyes an endorsement of realignment because the Supreme Court is allegedly rejecting any practice with adverse impact on minorities.

There is one important qualification in the decision, and it is one admitted by EEOC. The Supreme Court does not bar tests or other criteria if those tests and criteria are demonstrably and directly related to job performance. Fair enough. But behind this seemingly major concession are two ploys:

Ploy I: Are we talking about minimum standard performance or about best possible performance? If the former, almost everyone can have almost any job. Other government regulations make it impossible or impractical to dismiss or pressure the less or least able employees.

Ploy II: Any definition of a performance which has adverse impact can be attacked as discriminatory.

These two ploys explain why, from EEOC's point of view, the key test of discrimination is no longer intent to discriminate but an adverse impact. This is what is known as institutional discrimination, or covert discrimination. This concept also provides the missing link to past overt discrimination, since institutional discrimination is alleged to reflect the cumulative effects of past overt discrimination.

For EEOC these cases accomplish the following: First, affirmative action can deal with alleged covert discrimination; second, affirmative action need not confine itself to individuals but can deal with groups; third, affirmative action can seek to engineer realignment. These points are buttressed by an appeal to the Justice Department which has declared:

> The consequences of discrimination are too complex to dissect case-by-case. . . and a [school or employer] dealing with imponderables of this sort ought not to be confined to the choice of either ignoring the problem or attempting the Sisyphean task of discerning its importance on an

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individual basis.[22]

We have now completed our survey of how the bureaucracy has taken Titles VI and VII — as well as executive orders on affirmative action and the actions of various courts and other bureaucratic agencies — and interpreted and implemented them solely from within the perspective of liberal social engineering. What are we to make of it? I want to argue, and I shall show in the next section, that this is a complete distortion of the law as well as the U.S. Constitution. For the moment I would characterize the operations of the bureaucracy as akin to a group of lawyers who have commandeered fire engines and rushed to a number of buildings. These buildings have been selected because an ethereal smoke is coming out of each. (I say ethereal because not everyone can see the smoke and the alarms have not sounded.) The lawyers then proceed to pour kerosene onto the buildings. When asked why, they respond that "where there's smoke there must be fire." When asked why the use of kerosene, we are told that it is the best they can do for they have no water.

The Role of the Judiciary

Since *Marbury v. Madison*, the U.S. Supreme Court has claimed the power of judicial review: the power to determine whether laws are consistent with the Constitution. This power is exercised with self-imposed restraints. *First*, the court operates with the assumption that the legislature did not "intend" to violate the Constitution. Hence, the burden of proof must rest with the party that sues. The court prefers not to rule on issues of constitutionality if any statute can be interpreted in a manner that will save appearances. *Second*, in order to avoid frivolous suits and constant disruption, the suing party must have a direct and substantial interest in the matter at stake. *Third*, in the name of the separation of powers, the court recognizes that some questions are political and therefore non-justiciable.

If the Court decides to review a case from a lower court it issues a writ of *certiorari*. The petition to grant such a writ must have the support of at least four Justices. In failing to issue

22. *Ibid.*, p. 5.

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a writ, the Court does not routinely provide an explanation. To provide an explanation would in effect be to rule on every case. If the Court fails to issue a writ of *certiorari*, that does not signify that the Court approves of the decision of the lower court. The ruling of the lower court, let us say a federal court, remains effective but only within the geographical limits of that circuit court. It is not national law. It is even possible that the majority of the Supreme Court may consider a lower court ruling in error and still not issue a writ. That is why the law of the land and the dictates of the U.S. Constitution may be determined only by looking to the actual and specific decisions of the U.S. Supreme Court, and not in what it refuses to decide.

We are now in a position to clarify EEOC's systematic distortion of judicial action. The key is the definition of affirmative action as underutilization (as determined by statistical survey) and the introduction of goals and timetables to overcome the discrimination implicitly measured in the underutilization. These concepts emerged in 1971. It was in 1971 that the Supreme Court refused to overrule the decision of the Third Circuit Court in the Philadelphia Plan. EEOC took the denial of a writ of *certiorari* as establishing that court's decision in a specific case as law extending to all cases. Not only is this extension unwarranted in general, but the denial of *certiorari* is specifically claimed by EEOC as endorsing the policy "to grant preferential treatment simply because of racial imbalances that exist in the work force."[23] The statement by EEOC moves back and forth about cases and persistently uses the expression "the courts" almost indiscriminately for federal courts and the Supreme Court. But no decision by the federal courts is the same as a decision by the Supreme Court.

The next distorted case was the Swann decision of 1971. EEOC took the Supreme Court as making realignment the law of the land. On the contrary, if we read the dictum of Chief Justice Warren Burger we encounter the specific rejection of such a concept:

> . . .a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an

23. *Ibid.*, p. 6.

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> educational policy is within the broad discretionary powers of school authorities; absent a finding of constitutional violation, however, that would not be within the authority of a federal court.[24]

There is a difference between what is permissible voluntarily and what the courts can order in the absence of specific proof of discrimination. Reading this back into the Philadelphia Plan we note that previous discrimination was a factor. Reading this forward to DeFunis and Bakke, we note that such assignments as the Court allows exclude no individual but merely concern assignment to a specific school. DeFunis and Bakke involved exclusions.

The other 1971 case used by EEOC to establish realignment was Griggs. In fact, rather than endorse realignment, the Supreme Court went out of its way to disclaim it and, in addition, to uphold the merit principle.

> Congress did not intend. . . to guarantee a job to every person regardless of qualifications. . . [Title VII] does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. . . . Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant.[25]

The most that EEOC could validly infer from *Griggs* was that employers would have to validate or justify any job requirements. Having to tread lightly, EEOC resorted to pressuring employers to institute voluntary goals and timetables. This raised the question of the constitutionality of self-imposed quota systems.

The Quota System: DeFunis

I use the expression *quota* system in this context because any

24. Burger, *Swann* 402 U.S. 1 (1971), p. 16.
25. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

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employer who had validated criteria would not need any specific numerical target. We should recall that we are discussing cases where there is no history or evidence of previous deliberate discrimination.

The first challenge to this voluntarily imposed quota system came in university admissions, not in the job market. Marco DeFunis had been denied admission to the University of Washington Law School, which had a separate admissions procedure and different evaluation criteria for minority applicants. DeFunis raised the constitutional issue by appealing to the Fourteenth Amendment (not Title VI or VII) and claimed that he had been denied equal protection of the laws. A lower court upheld Mr. DeFunis, and the judge, Lloyd Shorett, instructed the University of Washington Law School to admit him. The University did so but appealed the case to the Washington Supreme Court. The latter court reversed the lower court decision. The case was then appealed to the U.S. Supreme Court, although Mr. DeFunis continued to attend the law school. Oral argument was held before the Court on February 26, 1974, but in late April a majority of the Court declared the case moot. That is, it decided not to decide. The reason is simple enough: Since the Court had assurance that Mr. DeFunis would be graduating from the law school, the Court could claim that there was no longer a parter with a direct and substantial interest.

Many interested parties were disappointed by the failure of the Court to decide the issue involved. Many tried to make much of the failure to decide, just as others tried to capitalize on the fact that four justices (Justices Douglas, Marshall, White and Brennan) dissented on mooting the case. The latter wished the Court to arrive at some decision. So what did the decision not to decide mean?

Let us confine ourselves to what is purely objective. First, Mr. DeFunis had successfully challenged the University of Washington Law School. Second, one should reasonably infer that mooting was as technically based as it appeared to be. One of the mooters, Justice Blackmun, later voted for realignment in Bakke. Among the dissenters to mooting, Justice Douglas was opposed to realignment. In retrospect from the Bakke case, we can see that three of the mooters (Justices Stewart, Rehnquist, and Burger) would consistently maintain that the issues in-

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volved could be resolved without even appealing the U.S. Constitution but by reference to the laws themselves. Third, EEOC had originally issued a brief in support of the University of Washington and against Mr. DeFunis, but Solicitor General Robert Bork (under President Nixon) had requested the Court not to accept the brief. The Court complied.

EEOC could take small comfort in the DeFunis result. Its response consisted of two points: first to cloud the issue, and second to insist that special minority admittees were qualified. This represents an attempt to salvage some vestige of realignment by obscuring the difference between minimally qualified and best qualified. This is in line with the ploys developed in *Griggs*.

> While courts have differed in their view of the constitutionality of affirmative action programs, none has found reason to dispute the representation of the professional schools that the minority students admitted were qualified.[26]

Under the circumstances EEOC is forced to adopt a more defensive posture, arguing that affirmative action is overcoming past discrimination and that such discrimination is inferable from the statistics. Increasing use must be made of statistics because, with the passage of time and the objective working of the Civil Rights Act of 1964, overt cases of discrimination are harder and harder to find. That is why EEOC keeps referring to the Justice Department statement:

> . . . it would be an extraordinarily difficult task to require professional schools to substitute for their present programs a case-by-case examination of the impact of discrimination on each minority applicant.[27]

No doubt universities will be heartened by the solicitous concern shown for them by EEOC. But the crux of the matter is that the Justice Department is just another government bureaucracy and not the Supreme Court. The Justice Department neither makes the law nor determines it. We may also question whether the task is difficult and "Sisyphean" — or is it just impossible to make the case? In order to make the

26. *Statement on Affirmative Action*, p. 8.
27. *Ibid.*, p. 10.

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case, one would have to prove that statistical underachievement is a direct causal result of previously segregated schools, etc. This is a hypothesis and not a fact. And the one thing that advocates of realignment want to avoid is an open challenge to their hypotheses or even to have them exposed as hypotheses.

The other obvious difficulty that EEOC faces is the explicit mention in Titles VI and VII of individuals and not groups. It is their endeavor to overcome this obstacle that leads to the greatest distortion. Repeatedly EEOC makes use of the 1977 case *International Brotherhood of Teamsters v. United States* to claim that the Supreme Court accepts the statistical argument as proof of discrimination. When we examine the actual case record we find, yes, that statistics are allowed, but the qualifications on the statistics are never mentioned by EEOC. Let us note them:

> The Government bolstered its statistical evidence with the testimony of individuals who recounted over 40 specific instances of discrimination. . . individuals who testified about their personal experiences with the company brought the cold numbers convincingly to life. . . .We caution only that statistics. . . like any other kind of evidence. . . may be rebutted. In short, their usefulness depends upon all the surrounding facts and circumstances. . . .statistical evidence was not offered or used to support an erroneous theory that Title VII requires an employer's work force to be racially balanced. . . . 703 (j) makes clear that Title VII imposes no requirement that a work force mirror the general population. . . .
>
> . . .figures for the general population might not accurately reflect the pool of qualified job applicants. . . .[28]

In the part of its judgment that EEOC *fails* to quote, the U.S. Supreme Court has made clear that Title VII will *not* justify realignment. If this were not enough, we may cite an instance where EEOC does quote the exact words of the Court and then offers an interpretation of the words which is consistent with EEOC's own cherished support of realignment – but a ludicrous

28. *International Brotherhood of Teamsters v. United States*, 97 S.Ct. 1843, 1856-57 (1977).

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distortion of the Court's own view.

> *First the Court*: ". . . *absent explanation*, it is *ordinarily* to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired. (Italics mine.)"
>
> *Then, EEOC*: ". . . the most appropriate guide may be found in the Supreme Court's suggestion that absent discrimination, it is to be expected that work forces will be 'more or less representative of the population in the community from which employees are hired." (Italics mine.)
>
> *Then, EEOC*: ". . . the most appropriate guide may be found in the Supreme Court's suggestion that absent discrimination, it is to be expected that work forces will be 'more or less representative of the population in the community from which employees are hired.'" (Italics mine.)[29]

Not only is there a very strong difference between "to be expected" and "ordinarily to be expected" (for the latter implies all sorts of qualification), but the Court spoke of what might be in the absence of explanation, not in the absence of discrimination. There surely are all kinds of possible explanations for the lack of statistical parity. There are in fact many alternative hypotheses, perhaps some with more plausibility than the covert oppression one.

The Supreme Court on Bakke

In a case very similar to DeFunis, Alan Bakke sued the Medical School of the University of California at Davis on the grounds that his rejection was an instance of reverse discrimination. Davis had set aside 16 seats out of each class of 100 specifically for minorities. Bakke argued that this violated Title VI of the 1964 Civil Rights Act. He did not raise the constitutional issue but merely referred to specific statutes.

In July 1978, the Supreme Court ruled 5-4 in Mr. Bakke's favor. By the narrowest of margins, the Supreme Court had

29. *Statement on Affirmative Action*, pp. 2, 8.

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ruled in no uncertain terms that the Civil Rights Act of 1964 did not condone the interpretation of affirmative action given by EEOC, HEW, and various other government bureaucracies.

Some of the details of the ruling are worth noting. Although a majority ruled in Mr. Bakke's favor, not all members of the majority did so with the same explanation. Four of the justices (Justices Burger, Stewart, Rehnquist and Stevens) ruled on the narrow grounds that Section 601 of the Civil Rights Act of 1964 prohibits reverse discrimination. In their eyes, the statutory grounds were unusually clear. In effect, this bears out what we have so far said about Titles VI and VII. For these men, the mere technicalities of the law are totally at odds with the liberal reading.

The fifth justice who supported Mr. Bakke, Lewis Powell, went even further and decided on fundamental constitutional grounds that the Medical School of the University of California at Davis had violated Mr. Bakke's rights under the Fourteenth Amendment and had thereby denied him the equal protection of the laws.

Justice Powell then joined the dissenting minority (Justices Marshall, White, Blackmun, and Brennan) and formed a second but different majority ruling that a university could continue to take race into account in admissions decisions, even at the graduate level. This decision reversed the California Supreme Court, which had upheld Bakke but had forbidden the university to use its discretion on admissions.

Perhaps the most remarkable thing to emerge from this split was the attempt of the liberal elements in the media to present Justice Powell's moves as a compromise and to minimize the extent to which the Court's decision undercut affirmative action. Even a cursory reading of the opinions will show how untenable such a feat of legal engineering is.

The basic facts are:

(1) Justice Powell's support of Mr. Bakke was more sweeping than that the other justices because he anchored his support in the Constitution.

(2) Justice Powell's reasons for the second decision (taking race into account) is totally at odds with the reasons given by the "minority four" and provides no support whatsoever for a liberal reading.

(3) A careful reading of his decision will reveal that it is both

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a point-by-point rebuttal of the Brennan interpretation (for the "minority four") and an uncompromising and explicit rejection of realignment.

To begin, Justice Powell reiterated that the law and previous Supreme Court decisions were directed toward overt instances of oppression: ". . . we have never approved preferential classifications in the absence of proven constitutional or statutory violations. . . ." Moreover, the overt instances of discrimination can only be against individuals. "We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals. . ."

Justice Powell then goes on to reject the hypothesis of covert oppression as unsubstantiated. Here he makes clear his differences with the "minority four" in words that come close to accusing them of distorting the constitution.

> . . . I disagree with much that is said in their opinion.
>
> They would require as a justification for a program such as petitioner's, only two findings: (i) that there has been some form of discrimination against the preferred minority groups "by society at large". . . and (ii) that "there is reason to believe" that the disparate impact sought to be rectified by the program is the "product" of such discrimination. . . .
>
> The breadth of this hypothesis is unprecedented in our constitutional system. The first step is easily taken. . . . The second step, however, involves a speculative leap: but for this discrimination by society at large, Bakke "would have failed to qualify for admission" because Negro applicants. . . would have made better scores. Not one word in the record supports this conclusion.

On the basis of the foregoing, Justice Powell concludes that anything like realignment is constitutionally unacceptable.

> . . . the plurality offers no standards for courts to use in applying such a presumption of causation to other racial or ethnic classifications. . . .
>
> There is no principled basis for deciding which groups would merit "heightened judicial solicitude" and which would not . . . . This kind of variable sociological and political analysis necessary to produce such rankings simply does not lie within the judicial competence —

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even if they otherwise were politically feasible and socially desirable.

Finally, Justice Powell stresses that we must not sacrifice principle to expediency. To drive home this point in the most dramatic fashion, he quotes back in ironic fashion the very words of Archibald Cox (of Watergate fame) and the attorney for the anti-Bakke camp:

> In expounding the Constitution, the Court's role is to discern "principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place."

One other element in his position is worth stressing: the meaning of the Court's decision for the bureaucracy. The University of California at Davis Medical School did not carefully formulate its quotas but rather uncritically accepted them from HEW and EEOC, and the latter are acting unconstitutionally in formulating such quotas.

> . . . isolated segments of our vast governmental structures are not competent to make those decisions at least in the absence of legislative mandates and legislatively determined criteria.

In words reminiscent of the old Anglo-Saxon legal principle that people are innocent until proven guilty, Justice Powell dwells on the meaning of EEOC's favorite phrase, "good faith":

> In short, good faith would be presumed in the absence of a showing to the contrary in the manner permitted by our cases.[30]

Bureaucratic Reaction

And what is the bureaucratic reaction to this stunning defeat?

U.S. Attorney General Griffin Bell: "This is the first time the Supreme Court has upheld affirmative action, and it has done it in about as strong a way as possible."[31]

30. Powell, *New York Law Journal*, Thursday, June 19, 1978, pp. 21-26.

31. *Time, op. cit.*, p. 23.

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HEW Secretary, Joseph Califano: ". . .strongly supports this nation's continuing effort to live up to its historic promise – to bring minorities and other disadvantaged groups into the mainstream of American Society through admissions policies that recognize the importance of diverse, integrated educational institutions."[32]

EEOC head Eleanor Holmes Norton: "My reading of the decision is that we are not compelled to do anything differently from the way we've done things in the past, and we are not going to."[33] The following was reported in the *Los Angeles Times*:

> Mrs. Norton said the EEOC had found "several indications" in the opinion by Justice Lewis Powell "that we may continue to set numerical targets" for the hiring of women and members of minorities. . . . "virtually everything we do falls under the rubric of congressionally authorized actions," which Justice Powell's opinion appeared to uphold.[34]

The Bakke decision represents a temporary setback for those liberals who seek realignment. One vote would have completely changed the course of America. The "minority four" of Justices Brennan, White, Blackmun, and Marshall explicitly accepted the concept of realignment. When one recalls, that Justices Burger, Powell, Rehnquist, and Stevens were appointed by Presidents Nixon and Ford, all since 1969, it is easy to imagine that had Hubert Humphrey won election in 1968, the Court would have had a completely different complexion. There is yet hope for the future. After all, *Brown v. Board of Education* in 1954 reversed *Plessy v. Ferguson* (1896). A future court may reverse Bakke.[35] In the meantime, at the bureaucracies it is business as usual.

32. *Ibid.*
33. *Ibid.*, p. 24.
34. *Los Angeles Times*, July 6, 1978.
35. The Weber case does not constitute a reversal of Bakke. It does not in any way permit EEOC to impose quotas and it does not legitimate realignment. Technically, the case concerns the voluntary self-imposition of quotas by private business and unions.

Having said that much, I must agree with Justice Rehnquist's opinion that even that voluntary policy is inconsistent with Title VII.

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The amount of behind the scenes political pressure that was exerted on members of the Supreme Court in order to salvage some symbolic vestige of affirmative action in the Weber case came close to exceeding the traditional norms of propriety. Some would say that the pressure *did* exceed the bounds and was a kind of affront to the dignity of the Court. Some hint of this outrage is gained by reading Rehnquist's eloquent dissent, a dissent in direct line with the famous dissents of the Holmes & Brandeis tradition. It establishes beyond the shadow of a reasonable doubt that Justice Brennan and his concurring brothers have not a legal leg to stand on. Justice Rehnquist rightly ridiculed the pretext that Titlte VII does not require preference but permits it; and then went on to denounce this verbiage as more appropriate to Orwell's description of *1984* than to a Supreme Court decision.

How then do we explain or understand the decision? Justices Powell and Stevens withdrew from the case, and Justice Potter Stewart joined the "minority four." The wording of the decision was careful enough to avoid compromising Justice Stewart's position on Bakke. The Weber case did not deal with new jobs; the agreement was temporary; there was no commitment to maintaining racial balance; and no decision on defining what is permissible affirmative action. The original 5-4 split in the Court has resurfaced in the 1980 decision that faculty at private universities are not employees, but part of management. Finally, it occurs to me that Justice Burger is correct in suggesting that this issue could be best handled by the legislature, but enough has been said here to indicate why that will not happen.

What is important about Brian Weber is that he is a tragic, if ironic, casualty of problems indigenous to unionism. Under pressure from their own liberal attorneys, the union accepted the arrangement. As is typical of most unions, it operates with seniority, not merit, and enshrines the principle that the least productive worker is the common denominator. Under these circumstances it is difficult to make the case that it really matters who gets to this force, and too many academicians value peer review enough to blow the whistle on affirmative action. It is regrettable that blue-collar workers have no spokesman for the dignity of their skills.

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Over There

Mrs. Thatcher's Relapse

When Mrs. Thatcher's administration came to power a year ago, two immediate economic problems confronted it: government spending and the rise in the money supply. After one year in office, the two most immediate problems facing the administration are: government spending and the rise in the money supply. And at the rate things are going, the situation will be much the same a year hence — though it may be that the massive bank rate imposed by the government (17%) will at least choke off the expanding money supply somewhat.

Margaret Thatcher's defeat on the issue of public spending cuts is extremely ominous. She has, in fact, been beaten by "the system" — the vast network of pressure groups, entrenched bureaucrats and vested interests who all feed at the public trough. The scale of the defeat should not be underrated, either in economic or moral terms.

When the first program for the promised government spending cuts was assembled last July, the hullabaloo was tremendous. "The system" went into action. The cuts would mean that old people's homes would be closed; children would have to study bookless; kidney machines would be turned off; municipal tenants would be unable to meet their new rents. The blood was supposed to run cold and in many cases it did.

But an examination of this supposedly dramatic retrenchment showed only that the plans for increased government spending left by Labor were being cut. And a still closer examination shows that for the first year of Mrs. Thatcher's administration, public expenditure would be fractionally *up* on Labor's last year!

Further "cuts," i.e., cuts in the rate of increase, were announced in the Fall for the fiscal year 1980-81. The hullabaloo broke out again. But this time, some cynical Tory voices made themselves heard above the cries from "the system." The cuts, said these voices, were still not real.

That was all right; further cuts of £2 billion were being worked on, said Mrs. Thatcher. Indeed, nothing would be sacred, she insisted. The cuts have now been completed. They work

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out at half the total promised. Vast areas, in practice, have proved decidedly sacrosanct.

Among those resisting the cuts have been several of those Tory politicians who vociferously preached retrenchment in Opposition. The problem is a familiar one, and not just in British politics.

Once a politician becomes Secretary for the Social Services or whatever, his self-interest moves from saving to spending. He wants to be remembered as a man who built the most hospitals, who gave the nurses the best deal, who raised child benefits and so on. Certainly that is how he will be judged by the media. Spenders are generally written up as enlightened and progressive; savers as mean or inhuman. And even where that line does not prevail in a newspaper's editorials, it will almost certainly prevail in the supposedly "expert" reports of the social services correspondents.

Since the latest cuts carry the spending program up to April 1981, the disagreeable fact of the matter is that by the time the government is two years into its four- or five-year term, official spending will still be running at about the same level as under the outgoing Labor government. The danger is that, as with most administrations, the second half will see it exposed to greater pressure to spend than in the first half.

If such a supposedly hard-line Tory leadership cannot even make a sizeable dent in government spending, can the momentum of state spending ever be curbed? Is not the wise course, some voters will ask, to abandon the unavailing pressure for cuts and simply try to secure for one's own industry, trade, or profession, some part of the general loot? If the trough is going to be emptied by others, one might as well barge in and see what is available.

Mrs. Thatcher herself does not seem wholly aware of the extent to which she has, in fact, been defeated. Like most women, she is very susceptible to the argument that a certain course of action was what she wanted in the first place.

The Admirable Carrington

That approach proved particularly fruitful when Lord Carrington, Foreign Secretary, successfully ensnared her in his Rhodesian solution. She had openly committed the Party to recognizing the Muzorewa regime and ending Britain's in-

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volvement. Lord Carrington – perhaps the only man in British politics able to make his Labor predecessor, David Owen, look like a good Foreign Secretary – had no intention of abiding by that line.

In due course he managed to persuade her at the Lusaka Commonwealth Conference that the abject concessions he had planned for her were partly her idea in the first place. To be fair to Lord Carrington, he can be persuasive. True, it is his only talent – but he has it in abundance.

If Mrs. Thatcher's first foray into overseas negotiations (at Lusaka) saw her yielding ground on all points, it came as little surprise to those who knew her well that she has also been soundly beaten on the issue of Britain's contribution to the Common Market. At present Britain pays about £1,200 million to the Community under the bizarre Common Agricultural Policy which props up inefficient continental farmers. She insisted before the Dublin summit of the Market heads of government last December that she wanted just about the whole contribution cancelled.

She was not going to take "No" for an answer, she rashly told her cheering followers, not once but several times. But "No" was, of course, the answer. And her emissaries are now touring the Chancellories of Europe, looking for a reasonable compromise. But even that seems unlikely to materialize, not least since she has said on several occasions that *whatever* the outcome of the negotiations, Britain must never leave the Common Market.

It is a pretty rum sort of negotiating stance by any standards. "Do what you like to us – we'll never use or threaten to use the one weapon likely to have a real impact."

She is not proving, in short, very skilled in her personal dealings, either with foreign heads of government or with her own cabinet ministers. Her intentions and attitudes are always plain enough – strident, even, in the view of her critics. And her analyses of problems are not at all bad. But her skill in getting things implemented – sheer political *savoir faire* – leaves much to be desired.

The most immediate impact of the government failure to secure spending cuts is that the bank rate is prodigiously high and likely to remain so for some time. And the once much vaunted tax-cutting program, which she used to insist was

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the acid test of her type of Conservatism, has been put back. There will be no general tax cuts this year. Or perhaps even next year. The impact on Tory morale, if tax cuts do not materialize next year, could be substantial.

That the government is not further down in the opinion polls than it is must largely be ascribed to the general disarray of the Labor Party.

The Party's Left wing is making one of its periodic attempts to get control of the movement. This time the attack has been unprecedentedly successful. The outer defenses are down and only the citadel of the Shadow Cabinet itself seems intact, more or less.

But the defense, led by a weary James Callaghan, is dispirited and haphazard. He seems unable to bring himself either to fight or to resign. His most likely successor would be the former Chancellor of the Exchequer, Dennis Healey, potentially a real hammer of the Left. But until the numbing hand of Jim Callaghan is removed one way or another, it seems unlikely that the counter-attack by the party moderates will get into top gear.

Moderate Murmurs

In these circumstances, it is not surprising that murmurs are coming from Brussels, where Labor's former deputy leader, Roy Jenkins, is coming to the end of his term as Britain's chief representative on the Common Market Commission.

This sleek and formidable Labor moderate is casting covetous eyes on the British premiership. Now unpopular with many Labor Members of Parliament for his role in the Common Market (anti-Market feeling is constantly on the increase), Mr. Jenkins plans a comeback with a new "Center Radical" party.

The general consensus among political observers in Britain is that Mr. Jenkins will not succeed. Those familiar with the track record of these observers will probably recognize this as a good omen for him. It is known that he has had conversations with David Steel, the leader of the small and waning Liberal center Party, which once hoped to hold the balance of power between Tory and Labor.

But more important is the prospect that the Left will overplay its hand, try to oust a number of sitting Labor moderates, and provide Mr. Jenkins with a hard core of twenty or thirty sitting MPs as the base of his new party.

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Certainly, if the Thatcher administration fails to deliver the goods in the coming year or two, then there is a good prospect of a Jenkinsite center party scooping up disillusioned Tory voters as well as disillusioned Labor moderates.

There would thus seem to be the decent prospect of a sizeable earthquake in British politics in the next two or three years. Roy Jenkins is not a man who is easily stopped. And those voters with longish memories may recall that, as Labor's Chancellor of the Exchequer from 1967-70, he never raised income tax. He even got the money supply so tightly under control that Conservatives raised their eyebrows.

Having stumbled badly in economic policy, the government has little to console itself within the field of industrial relations. The Luddism of the unions remains as powerful as ever. Productivity is poor, strikes frequent. And the ability of the unions to involve innocent third and fourth parties in their disputes continues to arouse public indignation, not to say rage.

Opinion polls regularly yield overwhelming support for propositions that unions should be curbed or cut down to size. But the question of how remains tricky.

The limited reform which the Thatcher government is making has provoked considerable irritation among the party's rank-and-file. Employment Secretary James Prior is regarded as too conciliatory or "wet," to use a favorite Conservative phrase. "You could grow cress on him" opined a leading Conservative MP recently.

Some fairly substantial reform sooner or later seems likely in the field of union law, if only to satisfy these disgruntled voices. But that is not immediately on the horizon. The catch for the government is that if changes in the law make it possible for a trade unionist to get sent to prison, then this is what will happen. The eagerness for a glorious end among early Christians looks casual compared with the passion for martyrdom which exists among some militant factions of the union movement. And once the martyr is safely locked up, his fellow militants can (and will) agitate fiercely for everything up to and including a General Strike.

If the general economic picture is discouraging, there are at any rate a few specks of hope here and there. The Treasury Ministers seem determined to get their way in the end even if they have been beaten in the first few rounds. (Which some

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pessimists regard as merely getting the economy right by the time Labor follows.)

The nationalized industries are being run on fairly strict lines, with their right to lose money more limited than for some time. The morass of price and income controls has also been avoided with some determination, despite the temptations which follow a 17 percent rate of inflation. Exchange controls have been abolished.

And (so far) the importance attached traditionally to the unemployment returns is on the decline. It was this misleading indicator which made the Conservative administration of Ted Heath fatally change course from retrenchment to desperate expansion in 1971.

As any visitor to Britain can see, there is, in fact, little unemployment at all. The problems confronted by visitors and residents alike are those usually associated with overemployment. Train services are liable to be curtailed because of staff shortages. The London underground is continually advertising for unskilled workers.

It is difficult to get simple plumbing and building work done at short notice. High unemployment benefits keep the employment figures high, not the lack of vacancies.

Nor in practice does Britain seem, for all the general gloom of the wider economic indicators, to be in the middle of a recession. More grumbles are heard about finding parking spaces than procuring the necessities of life. The winter drizzle in Central London falls not on marches of the unemployed but on double-parked Jaguars and Rolls-Royces.

And in particularly depressed areas, stores often puzzle over the sheer volume of expensive foods they sell to supposedly hard-up local populations.

A reason for this, of course, is the cash, or black, economy. That flourishes and expands. And to judge by the way in which the tax-cutting program has now been put back, it is an area of the economy which is going to go on flourishing and expanding for a long time yet.

Andrew Alexander

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Governing Italian Style

Contemporary Italy is a puzzling and deceptive country for visiting observers who do not really know what it is. It is a *trompe d'oeil* land in which almost nothing is exactly what it appears. Foreigners usually think it is more or less like other countries in Europe – with local variations, to be sure – a prolongation of Southern France, a long and narrow Spain, a more northerly Greece. This delusion would be harmless if it only produced starry-eyed travel books, ill-focused articles describing the charm of life in the disorderly Peninsula, or inconsequential diplomatic reports trying to analyze its tangled political mess. What is more serious (and often tragic) is that, on the basis of superficial diagnoses, fateful decisions involving Italian society and politics were taken in the past, with appalling results, and will probably be taken in the future.

What follows is a brief resume of what should be kept in mind (and possibly meditated upon) before dealing with Italy and its problems.

Italy did not become one State when other great European nations were united under one crown, given one capital city, one law, one language, and one national identity. It was unified by luck, the ingenious utilization of foreign rivalries, and the efforts of a tiny and heroic minority of Italians in 1860. Venice became Italian only in 1866, Rome in 1870. But formal, forced, juridical, and somewhat artificial unification did not change the Italians' character. Among the anicent national trends which survived were (to cite a few) a preference for living in laughable principalities and small musical-comedy monarchies; contempt for any government, good or bad, and all laws; as well as contempt for fiscal and police authorities. Most Italians seemed and seem to consider governments necessary and inevitable, but prefer to leave the unpleasant responsibilities to a despised separate minority (Italian or foreign) and live their lives according to their ancient habits.

The final unfiication of Italy was brought about mainly against two great oppositions, the Church (considered as a temporal power) and the proletariat. These mighty enemies of the unified, liberal, democratic, parliamentary state (which was the product of the times, the industrial revolution, the construction of the railroads, and the bourgeoisie) later made governing the

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country an almost impossible task for more than one hundred years. These forces were represented, until World War I, on the Left by the Radicals, Revolutionaries, Socialists, and Anarcho-Syndicalists, and on the Rigth by the mass following of the Church, organized by the parishes and led by the Hierarchy. Most of united Italy's puzzling political decisions in the last century can be explained by the elite's knowledge of how fragile the construction was. Italy joined an unnatural alliance of the Austrian and German empires, in 1882, merely to prevent a war of revenge by the Austrians and to intimidate the French. It also involved itself in disastrous colonial adventures and clumsy and costly nationalistic gestures in an effort to weaken the two mighty internal oppositions.

The country was several generations behind the United States, France, and Germany in industrialization. Therefore all the phenomena which are typical of under-developed countries (workers' revolts, irresponsible trade unionism, ruinous strikes, anarchism, violence, irrational extremist political movements, etc.) could also be observed in Italy but much later and in a more virulent form than elsewhere. These phenomena can still be observed today.

The great crisis came after World War I. The unified state was on the verge of collapse. Fascism did not really restore its strength. People thought that the state existed and worked. It did not. It was mainly a show. Under the uniform surface all the forces which had been active before, the earnest minority which had tried to govern and educate the Italians as well as the majority which had made the country practically ungovernable, survived. They came to the surface after the Second World War, with different names from those by which they had been known before but with the same general aims.

Italians had learned to survive in disorderly conditions by utilizing and improving their ancient arts. Only a small part of the bourgeoisie was patriotic, law abiding, civic minded, devoted to duty. It formed an elite at the European level. It made the wheels go around. It produced eminent men. These Italians were perennially embittered and discouraged by the behaviour of their countrymen. The large majority set the course of their lives according to the prevailing winds, and did whatever was opportune and necessary to survive and prosper at the moment. They developed (as one Italian writer put it) "private virtues

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and public vices." They were and are flexible and prudent, sometimes unreliable.

One must bear in mind, above all, that all internal oppositions to the unified, centralized, liberal, parliamentary, secular state always contained and still contain strong reactionary elements. Even today most of them (sometimes unknowingly) dream of a return to an archaic society which they never knew and which never really existed. They dream, above all, of destroying the industrial world, with its structures and disciplines (but not its abundance).

The move which irreparably conditioned Italian political life for generations was the massive backing (financial and organizational) by the Soviet Union, right after the war, of the Italian Communist Party. For the first time a wealthy and extremely well-organized party, led by experienced cadres, appeared on the Italian scene. Its success was facilitated by the following factors: the industrialization process had to give birth (as it did in all countries) to a powerful working class party, and this could only be the Communist Party because the old Socialist Party was discredited by its many mistakes (it was partly responsible for the advent of Fascism) and by its subservience to the Communist Party; the Communist Party was not entirely a foreign importation but had legitimate roots in Italian history; masses accustomed to regimented, dogmatic, and oppressive regimes could easily turn from extreme Left to extreme Right but could scarcely halfway, since they could not conceive the meaning of liberty.

To face the danger of a takeover by pro- Soviet, Stalinist Communists (as they were then) and their Socialist allies, the U.S.A. and the majority of the Italian people backed the only organization which could face the marxists with any hope of success: the Church. Millions of dollars were given to the Christian Democratic Party. Italy was saved for the West in the 1948 elections. But the Christian Democrats had only one capable man (De Gasperi), among many incompetent, inept, and sometimes corrupt leaders — who ran the country inefficiently, to say the least. They proved the point that Catholics (in the political and not the religious sense of the word) cannot govern well anywhere because of their peculiar ideas. They are guided by charity instead of justice hold man-made laws in contempt and consider man an inveterate and incorrigible

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sinner. To correct the inequalities of the economy they resort to what the Church has done down the centuries, alms-giving, which, in the contemporary world, turns out to be the distribution of freshly printed banknotes as subsidies and pensions, the financing of the deficits of State owned industries, and the pouring of money down all possible open drains. Finally they continued stubbornly and successfully to fight their ancestral enemy, the state, or what was left of it, gaily demolishing and corrupting it, without remembering that it now also constituted their own defense.

The final (and possibly fatal) error was the alliance of Christian Democrats and Socialists in the government. (Italian Socialists are a pecuilar kind of Socialist, the kind to be found only in underdeveloped countries.) It lasted almost twenty years. It reduced the forces of order to disarmed impotence, destroyed the school system, filled the courts of laws with subversive judges, brought all State-owned industries to the verge of bankrupcy. Political strikes paralyzed the economy. Capital (as well as many capable men) field the country. Laws were passed that prohibited the firing of bad workers, the promotion of good ones to better jobs, the transfer of some from one sector to another of the same industrial plant or from one dying industry to a flourishing one. The almost complete elimination of the previous elite from all fields of activity and its substitution with inexperienced and sectarian men completed the job. Italy faced ultimate ruin.

It was saved, temporarily at least, by one of its historic defects: the Italians' lack of respect for laws and governments. Part of the economy went underground, "black labor" freed workers from the laws that would have prevented their employment, some stifling taxes were artfully avoided. Recourse was made to cottage and piece work. Exports rose. What Italians were rigorously forbidden to do at home they did in Africa, in South America, in the Arabian countries, in Iran, etc. where they built dikes, motor highways, railroads, factories, industrial plants, bridges, ports, and entire cities. Economists do not now know and cannot even estimate the exact amount of the Italian G.N.P. Undoubtedly, while all this saved the life of the country, it weakened the state even more.

As a result, Italy exists and flourishes as a collection of active, vigorous, lively, ingenious, inventive, hard-working individuals

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(who carry the burden of one of the most wasteful governments in the world and of a larger percentage of non-productive parasites than in any other industrialized nation). Italy, however, can no longer be considered an efficient, unified, coherent, modern state, a serious factor in international relations. Some historians think the two great enemies of the nineteenth – century liberal unification have triumphed and almost completely undone what had been achieved by a minority of enlightened middle class. "What one sees," wrote one observer, "is the feverish activity of worms on a corpse, not a whole live organism."

One of the results has been the outbreak of violence. The police had been demoralized and disarmed, the jails disorganized, the law derided, all authority discredited; masses of young people had been uprooted from the farms, the shops, the industrial plants, admitted without examinations to the universities, with the implicit promise that within a few years they would become members of the ruling class without studying. At the same time the universities were (literally) destroyed by bad management, bad laws, the influx of incompetent teachers, and a permissive, resigned stand in fron to students' revolts; the economy (the visible part), which should have absorbed some of the graduates, was brought to the verge of bankruptcy. Inevitably, a floating population of *deracines*, young men and women found some relief (and revenge) in demented ideologies and violence. They formed secret organizations, financed by robberies and kidnappings, and murdered anybody they chose without fear.

The turning point was Moro's death. For the first time the Christian Democratic, Socialist and allied leaders realized that from then on they themselves were in the front lines and that each one of them could be murdered anytime. Something had to be done. What? It was too late to reconstruct and modernize the bureaucracy, the jails, the insane asylums, the courts of law, the universities, and the police, or to abolish the many intricate laws hampering the economy. Many thought the only thing to do was to include the Communists in a government coalition, and utilize their influence with the workers and the young in order to establish some sort of social peace. The same strategem, to enroll the pyromaniacs in the fire brigade, had been resorted to in 1922, when the Fascists were admitted

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to power and their leader named prime minister, with well-known ultimate consequences. Today, the difficulties retarding the execution of this project are, however, rather serious. The dangerous international situation prevents it for the time being. The Soviets themselves probably do not see it with a favorable eye. But the alternative solution (governing the country in the common interest, honestly, intelligently, realistically, economically, efficiently, without waste, corruption, and recourse to demagogy) is just as difficult – almost impossible for the parties in power. What will happen next is more ore less what has happened before. Italy will once again be considered a "geographical expression" (Metternich's famous definition), strategically dominating the Mediterranean, thickly inhabited by a lively population which refuses to die. Many Italians are (and will always be) among the most brilliant men in the world, but, added together, they will not form a solid whole.

Luigi Barzini

Another French Revolution?

Mrs. Thatcher's open move in a radical conservative direction is perhaps unique in Europe. But France too is having a revolution – albeit a "silent revolution."

In September 1976, when President Giscard d'Estaing called Raymond Barre to be his Prime Minister, he gave him three years to bring France back to economic stability. This goal has not really been achieved. (Could it be?) Inflation is still roaring ahead at a 10% annual rate. We have more than 1.5 million unemployed. Our growth rate is about half what it was before the oil crisis of 1974. But nobody can deny that in three years Mr. Barre's policy has put France on a completely new economic and political course.

Is "revolution" an exaggeration? In practical terms, four major economic changes have taken place within the last three years: the removal of all price controls regulating French industries and trades; the decision to stop subsidies to nationalized industries and ailing firms (even when this means bankruptcy); a complete overhaul of French industrial policy; and a new con-

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ception of monetary policy.

The decision to remove all price controls was announced within a few weeks of the March 1978 elections. Here is a true revolution. Price controls had been the rule for more than thirty years, indeed since the first days of the Second World War. These controls, based upon government orders dating from 1945, have been applied more or less coercively, depending on the political mood of French authorities and the needs of the economic situation. But they had never been repealed so that, since the war, French industry always had to live with one sort or another of state price regulation.

In specific trades, it was even worse. For example, when Gaston Maunoury, French Minister for Economic Affairs, decided to allow complete freedom for bread prices, in September 1978, this was a commodity whose prices had continuously been regulated since . . . 1791. The official cartel which, up to 1978, regulated the trade and prices of oil products, under the supervision of the French ministry for industry, was formed in . . . 1926.

One can easily understand what kind of upheaval this dramatic move means for French entrepreneurs. Most have welcomed it. Still we must not forget that French firms, while they condemned the system (because of its negative consequences on profits and investments), in fact found some comfort in relying permanently upon the guidance of the French Administration. The drawbacks of this system for them were often compensated for by generous state subsidies (as in the case of the steel industry).

At first people thought this removal of controls would be applied gradually. But the French government rightly chose to act in a way that is often advocated by economists who favor deregulation: mainly, total and rapid deregulation. All industrial prices were deregulated in 1978.

Today, everybody agrees on the success of this policy. It is true that French customers now pay 20% more than they used to for a loaf of bread. Public transportation tariffs are 15% higher than a year ago. On the whole, however, the dramatic government move has had little impact on the overall cost-of-living index. The French inflation rate is no higher than it was two or three years ago. France is the only Western country to have experienced a quasi-stable rate of price increases for four

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years in a row.

The decision to reduce government subsidies to nationalized industries and the declaration that the government will stop pumping money into ailing firms also date from the weeks which followed the 1978 elections. We do not yet have enough financial data to know to what extent this new policy has really been implemented. However, it is already clear that the French government did not back down when private industries called upon it to save them from bankruptcy.

Take the case of the steel industry. The shutting down of half of its Lorraine facilities and the gradual layoff of more than 30,000 steel workers were the first tests of the true willingness of French authorities to stick to their new rule of action. It is interesting that in this highly politically sensitive field, the French government finally did not back down in spite of heavy social unrest and even street riots.

One can also detect a change in the general political climate. For the first time we hear political leaders – even among the leftist opposition – openly endorsing the idea that we must close down lame ducks and unprofitable businesses. For the first time we find high public officers who understand that to give one franc of subsidy to a lame duck is to take that franc from a healthy firm. Among good economists this has long been a truism. But in French politics it is an utterly new idea.

The New Look in French Planning

Traditional indicative planning – the type usually described in economic textbooks – died at the end of the sixties. The Fifth Plan was the last of the "true" French plans.

Since 1974, when the oil crisis spurred development of new industries to pay for the higher oil imports bill, the Commissariat General du Plan has again been playing an important role in French economic life, but with a completely new approach to industrial policy.

There are no more industry targets in the Eighth Plan. Nobody hears any more about that "marvelous" French concept of the Plan as a device for collective industrial "concertation." What we hear is something very different:

– the idea that the real challenge facing the French economy is the competitiveness of its individual firms on international markets;

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– the idea that this competitiveness does not rest on the amount of public subsidies to exports, on the cheapness of the franc, or the absolute size of our big firms, but first and foremost on the ability of French entrepreneurs to find their place within the new international division of labor and to run profitable businesses;
– the idea that the role of government and the planning commission is not to tell entrepreneurs what they have to do, nor to select industrial sectors that should be given top priorities in the allocation of public funds, but to help firms to get the ability to make the best strategic choices, according to market information they alone possess.

There again, it is difficult for non-French people to understand what a novelty all this represents. For the first time, we hear a clear recognition that economic growth does not depend on artificial government stimuli, but on the ability of our entrepreneurs to do their job in competitive markets.

In monetary policy, too, a number of new developments have occurred. The first event was the decision of Mr. Barre, back in the autumn of 1976, to fix a maximum annual ceiling on the growth of monetary aggregates: 12% maximum for M2. It was the first time in French history that such a monetary target had been officially announced. The second is that, within our Central Bank and at the Planning Commission, a growing number of people are openly discussing the need to adopt new strategies for monetary control using the monetary base concept. Finally there is the growing recognition that liberalization of the French economy will not be complete until we overhaul our financial and banking institutions. We must, for instance, bring real price competition within the official cartel formed by our national banks, decentralize the credit allocation process of our nationalized banking system, and get rid of our antiquated system of quantitative credit rationing with ceiling norms imposed upon each individual bank.

France is still far from being converted to monetarist ideas. Indeed, monetarism is often looked upon as a subversive instrument used by American intellectual imperialism. But Mr. Barre, in his monetary policy, is the first French political leader of the Fifth Republic to attempt to break up our long tradition of systematic Keynesian monetary mismanagement.

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How is it that France has managed such a change in the way it runs its economy? Is it because we have a Prime Minister who was once a prominent professor of economics? Or is it the result of a decisive shift in French public opinion toward free market philosophy?

Neither is the case. While it may be true that this change is in harmony with the "liberal" ideas of our President and his Prime Minister, the objective truth lies elsewhere. The French N.E.P. is not the fruit of any dogmatic or intellectual *a priori* argument as in England. The real explanation lies in the gradual awareness of French public officers concerning the new international constraints imposed by the energy shortage and the failures of our past economic and industrial Gaullist policies to cope with them.

For the last decade, our economic policy has been dominated by the idea that France is an "underindustrialized" country compared with our main neighbor and competitor: Germany. To bridge this gap, "industrialization" has been the key word. President Pompidou gave it to our country when he succeeded General De Gaulle. This goal has apparently been achieved. For several years we had the highest rate of growth among Western countries (6% for the period 1969 -1974). But what did we discover after 1974? The so-called French miracle of the first part of the seventies was largely founded on an illusion.

Our remarkable economic growth at the end of the sixties and beginning of the seventies was achieved through the use of artificial advantages (undervaluation of the franc, low interest rates, easy and cheap credit, export and industrial subsidies. . .). These were successful in the short term, but did not give our country the industrial structure that was most needed, nor the kind of investment we needed to find our place in the new international division of labor resulting from the rapid rise of new industrial capacities in some underdeveloped countries. The consequences of this "artificial" growth were that we today find ourselves more and more in a situation close to that of the British. The insufficient competitiveness of our industrial structure condemns us to a low and dwindling rate of growth because of our inability to sustain reflation without massive external deficits.

More than anything else, the French N.E.P. is the fruit of a

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growing awareness that, even though we succeeded in stimulating the speed of our "industrialization," the kinds of policy and instruments we used to fulfill this aim have not given us the *form* of industrialization that would enable us to pay for the higher oil bill. Raymond Barre has got rid of price controls because, with a growing number of his advisers, he has come to understand that the only chance to maintain the French standard of living is to get rid of all those traditional bureaucratic interventions and Keynesian management tools whose only effects for the last ten years have been to delay the necessary reallocation of resources required by world markets.

Of course, the people who openly think in this way are still only a handful. Most government economic experts remain die-hard Keynesians and devotees of Cambridge. But something is happening which would have been unbelievable just a few years ago: our ministries are places where you find influential people who, often without knowing it, share Professor Hayek's ideas on the perverse effects of cheap money.

The Ideological Shake-up

Nor does this new look in French economic policy owe very much to ideology. This is perhaps the main difference with Mrs. Thatcher's experiment in England. It is a pragmatic reaction to new challenges now facing France. Yet this does not mean that nothing is happening in the field of ideas. Quite the contrary; a huge ideological shake-up is in process. Some French writers are already openly speaking of an intellectual "conservative revolution." We are living a period of deep intellectual renewal, marked by a growing challenge to the near monopoly which Marxist and statist ideas have enjoyed among French intellectuals since the war.

This intellectual shake-up is not without ambiguities (see for example, the French "New Right" which is riding on the anti-Marxist wave but is clearly inspired by a philosophy of planning and the corporate state). The influence of this new intellectual conservatism on French politics is still very slim. But important seeds have been sown: we should reap the fruit later.

The "new philosophers" attracted wide international press coverage in 1977. They are not altogether new, since they repeat the warnings against totalitarianism which a number of eminent scholars gave us some thirty or forty years ago. Yet

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they are important, for two reasons: First, because they have been brought up in the Marxist stronghold of the Sorbonne. Second, because while they still remain heavily influenced by their Marxist past, they are on a path which clearly leads to the gradual rediscovery of most true "liberal" values. For example, it is interesting to note that in his latest book, *Le testament de Dieu*, Bernard Henry Levy publicly claims that "bourgeois liberties are the only true liberties which have ever existed." Just a few years ago could we have expected such a thing from a philosopher reared on Marxism?

Les "Nouveaux Economistes"

The "new economists" have nothing to do with the new philosophers. They are a group of about 15 to 20 young university economists under forty. Three years ago they decided to pool their efforts to promote in France a greater knowledge of the new scientific horizons opened by contemporary developments of microeconomics as applied to the whole realm of social issues and institutions (briefly stated, they belong to the Chicago School).

They, too, do not bring anything really new. None of them has yet made a fundamental contribution to the advancement of modern economics. However, they are "new" in that for the first time in post-war France a group of young scholars have openly challenged the dominant ideology of the mixed economy.

One of the most promising outshoots of this new economic school is the creation of a new foundation: la Fondation pour la Nouvelle Economie Politique, a privately funded organization whose purpose is to direct finance from industry towards research projects in the field of social economics. To understand the significance of this initiative, one must remember that economic research is traditionally an activity financed by government funds in the proportion of 90%, and that the French private sector apparently has never understood what kind of benefits it could draw from such a long-term investment. The foundation is already employing several full-time scholars. On the list of its priorities are: the economics of bureaucracy, the cost-benefit analysis of government regulations, the political economy of social transfers, and an economic assessment of the role of trade unions. By holding several academic seminars on

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related topics, it has succeeded in creating a new interest among prominent French scholars in the Buchanan approach to public choice economics. We now find even diehard socialist scholars showing a keen interest in Public Choice analyses of the political market.

By undertaking collective action at the right time, the "Nouveaux économistes" have opened new avenues in what was looking more and more like a completely deadlocked political discourse. Thanks to them, free market ideology is again a respectable and lively idea in France.

La Nouvelle Gauche

We are accustomed to thinking that whoever calls himself a socialist is in favor of ever more state intervention. This is true of traditional socialists, whether social democrats or Marxists. But for a growing number of young intellectuals in their twenties or thirties, socialism is now something very different. I am referring here to what we call in France "le mouvement autogestionnaire" – a movement which is battling for industrial democracy and more local self-government.

Behind the veil of "l'autogestion" appears a new brand of socialist philosophy based on the idea that it is as important to impose limits on the powers of central governments as it is to control the economic power of giant corporations. As one of their leaders recently wrote:

> to the traditional approach of the left – *trust our good faith, and we will solve your problems* – we must substitute the question *What can you do by yourself and what can we do, as government, to help you do it*? Far from being the fruit of revolution, socialism must be the outcome of a full-scale experimental society brought about by the efforts of many small groups of social innovators who will be the entrepreneurs of the future.

Of course, these young "autogestionnaires" are still a small minority within the political organizations of the French Left. But they are the most dynamic, active, and innovative part of it. They remain basically Marxist-minded. But one cannot help being struck by the new cultural values their philosophy supports, in contrast to the orthodox French socialist view that a change of government will solve all problems.

These men too are a proof of the growing reaction against the

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excesses of statism. They signify a decisive change in mind and in politics which leads, at both ends of the political spectrum, to a rediscovery of the role of individuals and individual autonomy in the dynamics of social change and collective action.

It is interesting to compare the recent writings of two prominent French scholars: Pierre Rosanvallon and Michel Crozier. Pierre Rosanvallon is the main French theoretician of "l'autogestion." For ten years he worked with the C.F.D.T., our national Union, where the very concept of "l'autogestion" was invented and has developed since 1968. Michel Crozier is the best-known French sociologist, whose book *La Société Bloquée* is now a classic in French literature. The first belongs to the Left and voted for Miterrand and the "Programme commun de le Gauche." The second is a Giscardian. But both describe the mechanism of social innovation in terms similar to those of modern cybernetics, which come close to the very concept of the open society as described by Professor Hayek. While not being aware of it, both rediscover the twin concepts of "Nomos" and "Taxis," and the fundamental idea that "one cannot change society by mere executive or legislative orders."

Within the French socialist party itself we also now find a growing minority openly opposing the huge nationalization scheme of their leader, François Mitterrand, and favoring a new policy mix much more in line with market arrangements (Michel Rocard and Pierre Mauroy). If the tide has not yet definitely turned, we already ride on a new wave affecting numerous forces on both sides of the traditional French political spectrum.

Henri LePage

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The New Entrepreneurial Revolution

NORMAN MACRAE

Three and a half years ago I wrote some articles in *The Economist* expounding the guess that the world was probably drawing to the end of the era of big business corporations, and suggesting what seemed likely to replace them. In the United States the Campaign for Economic Democracy, run by Tom Hayden and Jane Fonda, also believes that the world should be coming to the end of the era of big shareholder-run business corporations. They think these should be replaced by big business corporations whose boards of directors should be ponderously elected by "stakeholders" (employees, the surrounding community, the local government, any activist who wants to boss people about). The main object of these boards would apparently be to resist technological and geographical change, repeal the laws of supply and demand and to tell consumers where to get off. The "campaign," in my view, could not have grasped the wrong end of every stick with greater precision.

During the Henry Ford manufacturing age, about 40 of the world's 159 countries grew rich because they were temporarily able to increase productivity efficiently by organizational action from the top: that is, executives sat at some level in the offices of hierarchically run corporations and arranged how those below them on the assembly lines could most productively work with their hands.

This method of growing rich has now run into two rather fundamental difficulties: a "people problem" because educated workers in rich countries do not like to be organized from the top; and an "enterprise problem" because, now that much of manufacturing and most of the simple white collar tasks can be gradually automated so that more workers can become brain-workers, it will be nonsense to sit in hierarchical offices trying to arrange what the workers in the offices below do with their imagination.

In three successive waves of efforts to solve their "people problem" (or "alienation problem"), rich northern countries have (a) imported more amenable workers from the poorer

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south, (b) sent multinational factories down to the poorer south, (c) tried to persuade native workers to love factories more through worker participation. None of these three systems is conceivably going to work.

Immigration is not going to work because organized modern states have proved so appallingly bad at welcoming large groups of minority ethnic workers, even when they are the most desirable sort of citizens. First-generation immigrants from Pakistan or Turkey or Mexico or newest indies are the most daring of their village, often a marvellous entrepreneurial type. When they arrive in northern factories, they are told that they must integrate into the customs of those with whom they are menially set to work, which means "become bloody-minded, please."

The indignities piled upon them are borne meekly by the immigrants, but not by their sons. Since immigrants enter in waves when of child-bearing age, these sons arrive at awkward teenagehood in a generation bulge. They go mugging and call it revenge for 400 years of slavery, while bashing some old lady in Brixton whose sense of historical guilt is understandably small.

It is then discovered that welfare states are divisive in pluralist societies, even though they can be unifying in the Swedish sort of homogeneous society (where unification is not much needed anyway). Barriers are then put up against immigration, and there is much more widespread illegal entry than anybody dares to admit. A large disenfranchised illegal immigrant subproletariat is today encamped in both north Europe and north America. They are not loved.

Multinationals in Decline

The second remedy for the alienation of ordinary workers in rich northern countries was supposed to be to export manufacturing industries to the poor south. This will proceed, although in an erratic way. The most successfully exported industries will be for disguised re-import, like the American consumer electronics industry. This departed to Asia in the 1960s, but is now coming back to America for automated and computer-controlled production, because the American trade union restrictions and established managerial sloth which might have impeded this have disappeared while the domestic American industry did not exist. It would be wise to treat large

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segments of manufacturing industry in this way.

It will now generally be most uneconomic to build a factory to make widgets in areas which "have a long tradition of making widgets already." Manufacturing plants are worst built (as are cathedrals) in already-built-up areas with large site-clearing costs, log-jammed access roads, trade union traditions, self-important town councils, and local aesthetes who safeguard every Victorian relic – in short, they are least efficiently built in existing traditional industrial towns. This is a main reason why the United States now consists of two areas: the old trade-unionized Northeast (with a British-type rate of annual GNP growth and productivity, perhaps ½% to 1¾% a year) and the South and West of the country (with nearly Japan-like 5% per annum rates of economic growth). Tom Hayden's solution is to turn all of the United States into an exaggerated version of the worst things that happen in the Northeast. That would be good for Japan, but not for America.

If America's rise in productivity is forced to fall further behind that of some other countries, by reforms *a la* Hayden, it will no longer be true that the switch of jobs out of America would be via American multinational corporations. For one thing, during the 1950s and 1960s the old fixed exchange standard kept the dollar artificially dear in terms of foreign currency (making American investment abroad appear excessively profitable), while today the floating exchange standard keeps the dollar artificially cheap (making American investment abroad look excessively unrewarding). Equally important is a change in attitudes toward brand names. Compared with the money-making method of hiring out the knowhow, through some licensing agreement, the establishment of a multinational subsidiary in the 1960s was supposed to have the great advantage of maintaining the use of the process for the dear old firm. But multinational corporations failed to notice that, just as their emigrant boom took off, material ownership no longer was becoming a source of economic or political power, and was probably indeed becoming a source of loss of both.

An American multinational corporation has now become a device for taking up an artificially weak bargaining posture versus left-wing Marxists and right-wing nationalists among local politicians; and versus local competitors, whose normal practices (tax dodging in Latin European countries, giving

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bribes and arranging occasional coups in poor countries) must to some extent be copied by the multinationals, who are then accused of flinging bribery about.

For a brief period multinationals will now become even more unpopular in poor countries by *not* flinging bribery about, and by keeping so far out of politics in all countries that they will be criticized as insufficiently concerned corporate citizens. The age of pure multinationals is coming to an end – which is one of the subsidiary reasons why the age of most really massive business corporations is likely to be ending too. The age of entrepreneurial sub-contractors and licenses will succeed it.

Worker Participation: A Model

The third remedy for worker alienation was supposed to be worker participation or "producer democracy" in the rich countries themselves. Enthusiasts (including Mr. Hayden) say that workers must be allowed to vote for the committee that should run their workshop, just when the unproductivity of the public sector everywhere has shown that voting for a committee to run anything is the most inefficient possible way to run a whelkstall.

Producer democracy would bring a new and absurd – therefore fortunately soon overthrowable – combination of bosses and unions against consumers. As the average worker in many Western countries stays in a job for only three or four years, his vote will most logically be against saving corporate money through such things as properly funded pension schemes, and in favor of spending it on himself. Nor will worker alienation be cured by the belief of innovative Swedes that everybody will benefit when efficient, straight production lines are made to run around in inefficient circles. To nobody's surprise, firms organized in that way are beginning to go bust.

The apostles of worker participation say that their arguments are the same as those for universal suffrage in the nineteenth century. Exactly. The arguments belong entirely to this land of look-behind. Voter control of anything in the twentieth century shows where the world is coming from, not where it is going to. The place where the world is going to is called consumers' freedom.

It is now time to explain what I think is going to work, instead of being rude to Tom Hayden over what I think won't

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work. The best way of describing my views is that the sensible big business corporations will, under market influence, split into smaller and smaller profit centers, which will become more and more entrepreneurial. The more dramatic way of describing these views is to say that we will move from an era when people are primarily employed to an era when work will be primarily subcontracted to small groups.

For it is at this stage that the "people problem" becomes merged with the "enterprise problem." There are various pathologies in the way of understanding the next paragraph, particularly pathologies among brilliant and dynamic managers, but here goes.

The maximum sensible size for a participatory group – by which I mean a team of friends working together for a defined objective – is probably 10 or 11 people. Jesus Christ tried 12, and that proved one too many. The best "workers' participation" schemes will probably be those that define subcontractors' modules of output for each group of workers as small as 10 or 11, and then set them free to produce these modules on as entrepreneurial a subcontract as possible. Because these will be the most productive forms of organization, I think that free market economies will gradually provide them. But there will be gains for the businesses and countries that get there first.

If you need a typing pool, it might best be reborn as Typing Services Inc. You would then offer an index-linked contract to this mini-firm for a set period, specifying the services you want in return for a lump-sum monthly payment. The girls would apportion the work among themselves, devise their own flexitime, choose their own lifestyles, decide whether to replace somebody who left by another full-timer or a part-timer, or whether to do her work and keep more money per head for themselves. They could also decide whether to tender for extra paid work from outside.

As the parent company would provide the office, the capital equipment, and the organizational overhead, it might initially own most of Typing Services Inc.; but there would be full profit sharing from the beginning, plus the issue of co-ownership shares in the mini-firm as a reward for each year of completed service. Sometimes, the mini-firms would be called workers' co-operatives from the start. Except in one respect, I would not see a great difference between a "workers' co-operative" (which

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would have an allowance for the parent firm's loan of capital equipment written down into the lower price that the parent firm would pay for its output) and a part-owned entrepreneurial mini-firm of subcontractors.

The main difference is that bodies which liked to regard themselves as entrepreneurial mini-firms would probably prove more successful. Typing Services Inc. would soon face the threat (and opportunity) that business is bound to have to move progressively towards the paperless office. In almost every big firm today the computer is being used wastefully, and therefore nearly all white collar departments are of the wrong size and shape. There is a desperate need for entrepreneurship instead of bureaucracy at the beginning of this computer age, and I suspect that some mini-firms born within parent firms would become very profitable as outside consulting contractors, pioneering the way forward and teaching others how to marry computer room with typing pools. This is a more likely road of advance than the hope that you will get easily to the paperless office by trusting each manager to write a memo arranging how he and each of his colleagues can most quickly aid their firms' productivity by kissing their personal secretaries goodbye.

The co-owned (and other) shares of successfully pioneering mini-firms would acquire a high capital value, making a capitalist out of any Miss Muggins who sensibly allows a more dynamic Ms. Buggins in her mini-firm to set the pace. The same goes for her brother, Joe Muggins, in a factory job.

A main feature of a computer-controlled manufacturing system will be that it can be told (unlike a batch of mere human beings) to make some experimental changes in the 404th item coming along the assembly line. The successful big companies will be those which see that the best experiments for this "custom-built production at mass production prices" are not likely to be found by a committee; they will be found by (e.g.) renting out time on the assembly line to people with entrepreneurial ideas, including your own internal mini-firms.

Encouraging Innovations

The sensible movement in this direction should be spurred by several other obvious modern developments. First, many white-collar workers will gradually become telecommuters. Once systems for modern telecommunications are in place, the cost of

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using them should not vary greatly with distance. It will eventually be sensible for many white-collar workers to live in Tahiti if they want, and telecommute daily to their offices in New York. People will move to areas with the domestic lifestyles (and local governments) they like, and telecommute to offices with the workstyles they want. Sensible people will want different lifestyles and different workstyles at different periods of their lives.

Even at an early stage of this widening of horizons for white-collar workers, employers will have to start offering much more freedom of lifestyles for blue-collar workers as well.

Incentives to make workers happier will have to become much more individual, and be geared to allowing each human to choose his lifestyle – because choosing one's lifestyle is what freedom must mainly mean in the future. So tomorrow's job applicant will sit at a computer console and answer questions. Do you want a major personal say in choosing your own working hours? My own answer: "usually, yes." But in emergencies do you mind sudden periods of frantic working for a day and night on end? My answer: "no, actually I rather enjoy that." Do you mind. . .? The point is the obvious one: The atmosphere which each individual severally enjoys at work is an important part of that individual's happiness, and there is bound to be worker alienation until each individual can shop around to seek the atmosphere he wants.

When people can chat to a friendly computer about the workstyles they would like, it will probably be found that there is a surplus of would-be, part-time, part-risk entrepreneurs. This will be exactly what is needed.

All this is not to deny that some activities should pass under the management of bigger organizations, even while others become more entrepreneurial. During the eventide of the big business corporations, the most successful companies have been those restless enough to question what their management styles should be. Successful big American corporations today will often centralize their policy-making, with a significant initial gain in effectiveness; but then, as time passes, they will find that this does not work because the central planners do not know what is really going on out in the field. So these corporations will then decentralize, with a significant initial gain in effectiveness, but will then find that all their divisions are going in different

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directions. So they will then recentralize, with a significant gain in effectiveness, but after a time. . . This constant reorganization is in fact very sensible.

For the near future my guess is that many of the things traditionally left to small organizations — like professional services, hairdressing (which needs to become more automated), computerized tax-dodging advice, golf club management, etc. — will be made more efficient and profitable if they are periodically taken under some larger organization's control and run by some more disciplined process. But many of the things that have traditionally been run by some disciplined process (manufacturing, office management of big corporations, government services) will need periodically to be made much more entrepreneurial in very odd ways.

The general trend will now probably be for the periods of decentralization to become longer and go further than the periods of recentralization, which will make the "profit centers" smaller and smaller and therefore more entrepreneurial. My main argument is that this campaign for economic democracy, unlike Tom Hayden's, will be brought into operation by market forces, not by bossy laws passed by governments. This is very good news for everybody except the super-articulate, who love to shout from platforms and boss people about.

Auguries of Change

The move to this new form of democracy is already worldwide in train. Let me cite a few examples, deliberately picking from fields where devolution of decision-making to small groups once seemed least likely. (I give the examples without names, because often the experiments have been undertaken in a quiet way, so as not to wound upper managers' *amour propre*.)

In one almost completely automated Japanese automobile factory, what used to be the "assembly-line" area is divided into segments, each operated by teams of about ten. They leap into the cars as they come into their section, and check for faults. If they find a fault, it is their job as a team to flash a green light (calling up more workers, who race up on the double) or to take the major responsibility of flashing a red light (stopping the whole production line). Since responsible decisions were passed down to small groups of this sort, the production of fault-free cars has massively increased.

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In a major worldwide civil engineering concern a young accountant in his twenties proved most skilled at recommending how to handle export deals in order to borrow in the cheapest markets, reduce foreign exchange exposure, claw back tax. But is was becoming embarrassing that he kept writing memos saying how his seniors had boobed in big export deals on all these counts. Wisely, therefore, this genius was floated off as one director in a tiny two-director-plus-one-secretary subsidiary. Any senior executive elsewhere in the big group can now decide whether and what stage to put the "financial package" behind any big export deal through this subsidiary.

A big company marketing a seasonal product realized that its sales staff was underemployed for half the year. Management asked individuals to suggest joint ventures, with part of the profits going to the innovators and the rest to the firm (whose telex, secretarial facilities, etc., would be used). Two bright sparks in this company recommended buying the rights to sell toys and other branded goods connected with a particular television show and film which they thought would be a success. These sales soon made higher profits than sales of the firm's staple product.

A British film studio was going bust, and was likely to close down, because it was grossly underemployed. The studio asked its workers how many would like to stay on running subcontracting firms of their own. The cameramen now operate on subcontract when the film studios are full, but they arrange and shoot TV ads on their own initiative. The carpenters, plasterers, etc., now do outside building work, but with a subcontract to the studio. The chauffeurs, who had previously ferried film moguls (when the studio was operating), now run a minicab or chauffeured-car service, but with a contract with the studio when film moguls are using it. By last year, all were making more money than in the old days.

In retailing, success lies with those who are extending franchising. In local government services, success lies with reprivatization. In other services I quote a letter written from Australia to *The Economist* after my articles appeared:

> I called to collect some goods from a local transport company. By the standards of previous years the place seemed deserted, and I asked the fellow in charge what had happened. He told me: "We've been taken over, the new

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lot have an entirely new system. They got rid of their salaried drivers and loaders and now everything is done by sub-contracting. Four blokes now do the work of twelve and they are home by three o'clock instead of six or seven as in the old days. The drivers and their mates are now earning $400 (Australian) a week, twice what they used to get, so they're happy. The company's happy because it only has to pay them for what they do instead of paying them to sit in the pub. There is more action and less fuss so everyone's happy." He mentioned neither the unions nor the unemployed. Why would he?

And that probably sums up the way ahead.

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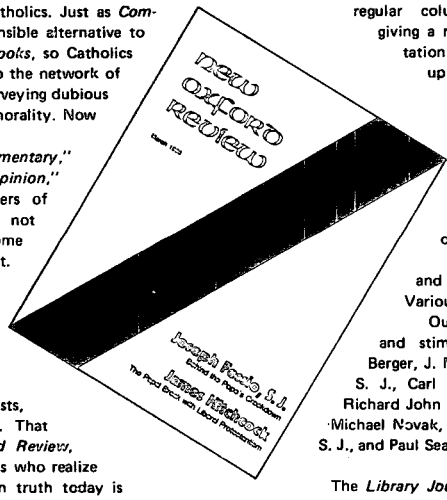

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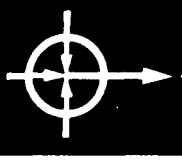

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Privatizing the City

MARK FRAZIER

When housing abandonments reached a critical level several years ago in their area, residents of the once-thriving community of Bushwick, New York, heard a somber prophecy from one of their number. "The people better get together – I mean everyone, the blacks, whites, Puerto Ricans and Italians, and I mean soon – before we wake up one morning and find ourselves surrounded by a deserted territory," said James Nevallo, head of a coalition of neighborhood associations. "Hoodlums and junkies vandalize the area and hide in the abandoned buildings. When we call the cops for help they just say: 'We'll see if we can send over an available car.' None ever come. The politicians don't give a damn about doing something for the community."

Bushwick as a whole today is empty of healthy economic activity; burned-out buildings and homes line formerly prosperous streets. Residents have deserted the community for suburbs where better police, sanitation services, and schools are available. Yet a few areas break the desolation. On Park Street, a neighborhood association has kept streets and sidewalks cleaned, provided block patrols, and tended to fences and adjacent public properties. "If you want to see how important active block associations are," observes Hector Crespo, a long-time leader of the group, "just look at the blocks that don't have any. Our block has the only good organization around here, and it is also the only decent block in the area."

The experience of the Bushwick area suggests that neighborhood associations can play an important role in improving conditions for residents of cities. Although politically-created constraints have limited the degree to which block associations may tap the energies and resources of their members, the organizations already have proven themselves capable of handling a wide range of responsibilities: picking up refuse, patrolling streets, running daycare centers, offering tutorials, buying street lights, and caring for nearby recreation facilities. The services provided by the voluntary groups are highly responsive to the needs of residents, and exceptionally eco-

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nomical.

Cities nonetheless continue to enlarge municipal budgets for services that demonstrably can be delivered at far less cost through nongovernmental means. A comparison between providers explains why municipalities do so. Neighborhood associations in large cities rely upon small corps of volunteers who count themselves fortunate if one fifth of the residents on their block contribute annual dues of $1 to $5. By contrast, city halls can tax every homeowner hundreds or thousands of dollars a year to support their service staffs on comfortable salaries. Although municipal departments may lack desired levels of productivity, neighborhood self-help associations are assumed to lack the necessary resources and staying power to be an alternative.

Two handicaps – seemingly inherent – have weakened most urban neighborhood associations. The first of these is the "free rider" problem, resulting from the absence of any obvious way for the association to withhold the benefits of its services from those who decline to pay for them. Lacking physically coercive means by which to ensure payment by all beneficiaries, private organizations are thus ordinarily considered to be far less suited for provision of "public services" than the government. The second problem consists of double payment. Residents of a neighborhood are forced to continue paying taxes for municipal services whether or not they arrange for provision by alternate sources. Few middle or low income families now enjoy the ability of affluent households to pay both private service fees and taxes.

A means is available for overcoming these two basic problems. In communities where services are at unsatisfactory levels of cost or performance, municipalities can offer property tax relief to neighborhoods that develop alternatives. The tax credits could trigger creation of new contractual self-help associations where none existed, and strengthen those already functioning. Credits should be made available only if *all* property owners agreed to attach provisions to deeds establishing automatic membership in a neighborhood association; in this way, the reform could end free-rider problems for both new and existing organizations. Citizens would be free to establish within their associations whatever service arrangements best met their needs. To resolve the double payment problem, the tax credits

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could be made proportional to the extent of local service responsibility transfered to neighborhood homeowners. Services provided to members of associations through private agreements might produce dramatic savings for citizens burdened with unresponsive, high-cost municipal services.

But before exploring the tax credit concept and its feasibility in detail, it is instructive to review the mechanisms through which residents of neighborhoods once influenced the delivery of local services. The decay of these instruments for ensuring the accountability of city hall has left a void that neighborhood associations are especially equipped to fill.

The Degeneration of Party

The first formal systems established for encouraging the responsiveness of city services appeared in America during the 1800s. As partisan politics arose at the local level, parties established district, ward, and precinct clubs to service loyal voters and distribute patronage to key supporters. Viewing municipal jobs as the legitimate spoils of victory, the parties did not hesitate to make use of patronage as a reward to their friends. The benefits of power, however, could only be enjoyed as long as voters continued their support. To ensure against electoral defeat, the parties employed precinct captains to visit with residents of each neighborhood, providing services and favors to constituents. Complaints by neighborhood residents about poor service delivery would be relayed through party channels to the appropriate problem-solver in city hall.

While the neighborhood political clubs generally assured that service delivery was sensitive to residents' needs, they also nurtured a variety of unsavory relationships between government officials and well-connected individuals. Wholesale graft characterized operations of Tammany Hall in New York and of its counterparts in other major cities during the latter part of the century. After particularly odious examples of bribery and kickbacks became known, pressures grew for reform, resulting in attempts to insulate municipalities from political abuses by establishing objective civil service requirements for employees. No longer were political considerations to play a role in the hiring and firing of staffers – "merit" criteria were ostensibly to prevail.

Initially, the party machines had little trouble circumventing

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efforts of the reformers. Although immigrants one day off the boat could no longer be inducted into the police force – at least without passing the entry examination – political connections still determined an individual's promotions. The political clubs also retained job patronage within "exempt" agencies and unclassified positions, as well as through juggling of one-year appointments so that "provisional" appointees were all but permanent. In many large cities, the neighborhood club houses remained secure in their roles for the first three decades of the 20th century.

Scandals, unsurprisingly, continued to break out regularly in the basically unchanged system. Candidates of the reform movement in response became increasingly successful at trimming powers of the political club. In New York, the election of Mayor Fiorello LaGuardia shook the party regulars after revelations of pervasive corruption under previous administrations. LaGuardia appointed fellow reformers, rather than members of the political machine, to key posts in city hall, weakening the ability of party regulars to service the needs of their neighborhoods. Simultaneous lessening of ·patronage opportunities further undercut the ability of the clubs to reward their stalwarts and create room at the bottom for new talent. Similar progress by reformers diluted the effectiveness of party regulars in Boston, Philadelphia, and an assortment of smaller communities.

The primacy of the political clubs also began to be challenged with the advent of the New Deal. Social service and income transfer programs introduced in response to the Depression diminished the dependence of neighborhood residents upon their block captain for assistance in solving their problems with jobs, coal supplies, and occasionally food. Still, the regular party organizations remained able to move city hall when necessary to quiet neighborhood complaints about street repair, traffic controls, and other routine aspects of city life throughout the 1940s and 1950s. Unionization of city workers and the inroads made by party non-regulars progressively reduced the influence of most clubs during this period, but regulars rather than reformers retained fundamental control over urban politics until the 1960s. The middle and latter portion of the decade saw a proliferation of insurgent candidates, disaffected with the policies of their party oligarchs at home and abroad. Rapidly

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expanding federal social service programs allowed them to build constituencies on a categorical rather than neighborhood basis.

In New York, the election of Republican-Liberal John Lindsay found regular Democrats frozen out of virtually all appointive positions in the city government. Appointees affiliated with the Republican and Liberal parties understandably felt little need to service the requests and complaints of Democratic Party clubs in more than a perfunctory way, if at all. The inability of party regulars to deliver effective responses to neighborhood complaints about city services, coupled with the greatly diminished patronage opportunities, resulted in the atrophy of a number of organizations.

As the effectiveness of the formal political organizations faded, civic associations began to come into their own. In large cities, their basic units are "block associations," organized by residents of one or more streets who have coalesced for the most part to react to a problem such as inadequate police protection or sanitation services. Organizing block associations has given residents a more effective means of lodging complaints with city hall than either individual protests or entreaties to vestigial political clubs. "The work block associations are doing is the same work Boss Tweed did at the turn of the century," notes a block liaison official in the Citizens' Committee for New York. Active block associations in that city have jumped from a few hundred to more than 1000 during the past 15 years.

Neighborhood associations in urban areas have not limited themselves to simply pressuring city hall for better service delivery. They have also taken on self-help programs, funded by the voluntary contributions of their members, to provide a range of needed or desired services. Associations in high-crime areas of Washington, D.C., Philadelphia, and New York have taken steps to safeguard residents by organizing (unarmed) foot and car crime prevention patrols. Many use volunteers to supplement patchy city refuse pickups and street cleaning. Some neighborhood associations have taken up special collections to purchase high-luminosity sodium vapor lamps as a deterrent for muggers, to purchase recreational items for neighborhood youths, or to paint deteriorating public facilities. Other activities of the associations include establishment of "miniparks,"

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purchase of sidewalk snowblowers, removal of graffiti, provision of day-care and old-age services, formation of food cooperatives, and operation of educational and tutoring services.

The obstacles facing associations in such self-help efforts are formidable. Because most neighborhood improvement efforts benefit residents whether or not they pay for them, associations feel lucky if they can enlist even a small proportion of residents as members. Dues by necessity are low. High turnover in many rental areas frustrates efforts to establish a feeling of community, and the core group of founding activists often "burns out" on account of the workload and the lack of both funding and back-up volunteers. As a result, neighborhood associations typically provide limited self-help services for a few years, and then lapse into dormancy.

In metropolitan areas, neighborhood associations nonetheless represent an enormous and barely tapped source of energy for self-help services. The fragmented and often temporary nature of their activities to date attests not to an intrinsic flaw, but rather to a failure of the political environment to create incentives for overcoming the problems of 'free riders' and double payment for services. Introduction of contractual covenants represents a step that neighborhoods can take toward resolving the first of these obstacles to self-help efforts. For a look at the possible benefits of the approach, the experience of associations strengthened by automatic contractual provisions offers a noteworthy guide.

Associations Formed by Deed Agreement

The first known use of deed-related agreements to eliminate the 'free rider' phenomenon appeared in the mid-1700s in London, England. At the prompting of Lord Leicester, who had established a park called Leicester Square, adjacent property owners agreed to assess themselves annually for maintenance of the area, a step that ensured higher values for their individual properties by making the neighborhood more congenial. Similar considerations prompted formation of associations in America to maintain Louisburg Square in Boston and Gramercy Park in New York during the early 1800s. In all of these arrangements, property holders paid a fee to support the annual upkeep of the area.

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The durability and success of the agreements prompted imitation on an increasing scale. By the turn of the century, developers were incorporating automatic membership provisions into deeds to support homeowner associations' maintenance of common properties and regulation of architectural standards. A 1230-acre residential housing development in Baltimore's North Side, started by Edward G. Boulton in 1891, demonstrated that associations could successfully provide water, road maintenance, and sewer services to members. Deed covenant-based stipulations of a similar nature gave rise to private communities in Kensington, Forest Hills, Breezy Point, and Seagate, New York. In most associations, the contractual provisions specified town meeting-style elections to set policy and elect leaders.

Fees or assessments in automatic-membership associations go to support the costs of common facilities and services. Virtually all homes associations are organized around privately owned, shared facilties, such as streets, parks, and swimming pools. Among the services provided by associations – generally through contracting with commercial service organizations – are street maintenance, upkeep of recreational facilities, refuse collection, snow plowing, and security patrols. A few homes associations even provide emergency medical and fire protection services. In most cases, the levels of assessments and services are specified intitially in deed-related contracts for home buyers, and subject to change upon vote of association members. Because the assessments are contractually equivalent to liens on property, automatic-membership homes associations have negligible problems with free riders.

Another benefit of homes associations is the protection offered members against acts by one another that can damage property values. By stipulating standards for home-owners to observe in maintaining their properties, the contractually based associations can prevent the degradation of residential areas through neglect or carelessness. In many instances, architectural standards prevent alterations or additions that would clash with the character of a neighborhood, or new construction that would introduce unwanted physical structures. Communities such as Houston have successfully used self-regulating covenants as an alternative to conventional zoning. Although restrictive covenants were once applied in some cases as a

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barrier to racial integration, the Supreme Court has decisively struck down their use for such purposes, while leaving neighborhoods full room to employ covenants for more wholesome ends.

The advantages of automatic-membership homes associations have led to an extraordinary increase in their numbers. Prior to 1965, according to the Community Associations Institute, only 600 such deed-based associations existed around the country. Today, the figure stands at more than 20,000. Surveys of members have revealed high levels of satisfaction with the homes association approach. In an Urban Lands Institute survey of 233 automatic-membership associations, representatives described the effects of the deed stipulations as "favorable" or "very favorable" to the value of their property in 91 percent of the responses. This perception was seconded by 83 percent of realtors polled. The researchers also found comparatively little physical deterioration in housing under association purview. Of the 29 associations examined that had housing built before World War II, only one had houses for sale in a "medium" price range or less. The others had resisted declines in marketability expected as houses age.

The Urban Land Institute study also showed a remarkable degree of satisfaction with association-provided facilities and services, in contrast to sentiments expressed by taxpayers towards municipal service delivery. Complaints recorded by members of deed-based homes associations in the ULI study ranged from a low of two percent toward swimming pool maintenance, to a high of eight percent toward care of recreation areas. "Almost unanimously, association members reported that they were getting their money's worth for the assessment dollar," the Urban Land Institute study concluded. The sensitivity of the association to desires of members accounted for the low costs and high levels of performance in the private services.

High levels of satisfaction, however, have not prevented homes associations from transfering responsibilities for service delivery to municipalities over time. Deed-based associations such as Kensington in New York and Palos Verdes near Los Angeles initially held responsibility for streets, sewers, and water systems. To avoid paying fees for their own service provision in addition to taxes that helped finance the same services

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for others within the larger political jurisdiction, these and similar homes associations have since surrendered service responsibility to local governments. The temptation to do so has arisen in part because of the depredations of federal taxation on surpluses accumulated for amortization of facilities, and the unanticipated loss of purchasing power of the surpluses from inflation. When costly capital expenditures come due – as is true for streets on approximately a 20-year cycle – members of homeowners associations are apt to question the wisdom of continuing costly self-help assessments on top of city-imposed property tax burdens.

Tax Credits for Self-help

Municipalities have a means by which to end the punitive impact of double payments upon residents who desire private services. By use of tax incentives, communities can encourage the transfer of costly and unresponsive municipal services to alternative providers. The approach consists of giving tax credits to members of homeowners associations in proportion to the amount of service responsibility transfered.

Offering credits of this sort against property taxes would allow existing homes associations to maintain and expand their services to members. Freed from the problem of double payments, associations could make service arrangements that resulted in more economical and effective attention to their needs. The prospect of reaping large net savings might prove particularly helpful in persuading residents of unorganized neighborhoods to form new associations. By making tax relief for such neighborhoods contingent upon participation by all property owners in the deed-based associations, the free-rider problem could also be resolved.

Neighborhoods given tax credits for transfer of local service responsibility could benefit in a number of ways. Among the principal effects of the tax credit proposal would be the following:

– *Reduced Spending*

Automatic membership associations represent a mechanism through which citizens can greatly reduce the costs of local service delivery. Opportunities for realizing savings have been consistently demonstrated through shifts to the private sector in

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virtually every municipal service area. Through contracting of services, some cities have shown it is possible to maintain desired levels of policing, fire protection, refuse pickup, street maintenance, and social services at significant reductions in spending. A recent study by University of California, Santa Barbara economist Dr. Robert Deacon, comparing 23 "contract cities" with 41 comparable non-contracting communities, found that the former paid just 58 percent of the latter per person for policing. Municipalities that contracted for street maintenance paid an average of 70 percent of their public sector counterparts. After surveying hundreds of cities in the mid-1970s, Columbia University professors E.S. Savas and Barbara Stevens found that savings of 30 percent were consistently possible for cities moving from municipal to private contract refuse collection. A detailed analysis of costs and performance of a large private fire service in Arizona, conducted by the Berkeley-based Institute for Local Self-Government, determined that clients enjoyed equivalent protection at a price averaging about 50 percent of that paid by taxpayers for nearby conventional fire services.

Although no guarantee exists that neighborhood associations would inevitably gain equal savings by contracting with providers, it is highly likely that less costly alternatives to present municipal service agencies could readily be found. Arrangements with private and parochial schools alone could save neighborhoods many thousands of dollars a year, while resulting in access to better education for children. Volunteer groups could supplement the efforts of contractors to reduce association membership assessments for other services still further. In each case, neighborhoods would reach their own decisions on the extent to which service delivery would be privatized, and the extent to which it would remain with the city. Economically and effectively delivered municipal services would run little risk of displacement by the tax credit approach. The associations would be likely to arrange for alternative providers when existing city services were expensive and ineffectual.

— *Improved Services*

In virtually all major cities, with the declining influence of political clubs and the growing independence of civil service bureaucracies, neighborhoods have lost much of their ability to hold government accountable for service delivery. Protests to

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city hall by block associations over shortfalls in services often yield dismal response: streetlights go unrepaired, potholes unfilled, garbage uncollected, criminals unapprehended, and children uninstructed by aloof city departments. The virtual monopoly held by municipalities over local services does little to ensure attentiveness to public needs.

By strengthening the ability of neighborhoods to secure needed services by nongovernmental means, residents of now-neglected areas would no longer have to accept whatever levels of service the municipal providers chose to deliver. Volunteer or contractual suppliers would be available in many instances to deliver desired services more responsively and effectively than does the city government. To survive such a competitive threat, lethargic municipal services would have to adopt far more conscientious and innovative approaches than now frequently manifested.

– Lessened Corruption

Local officials have found themselves entrusted with increasing resources as governmental services have grown in size and power. Rewards in the form of bribery and kickbacks have increased in proportion to the expansion of resources in the public sector. Citizens of many communities, never overly illusioned about the temptations awaiting local officials, today hold deeply cynical views about the behavior of officials throughout government. This view may often be unwarranted, particularly in relation to many small and medium-sized communities where standards of integrity remain high; yet it is a growing perception of the public. The decentralization and depoliticization of service responsibilities inherent in transfers to neighborhood associations could have salutary effects upon the conditions in a city that spawn corrupt government. Deprived of monopoly positions, administrators would be forced to moderate unproductive appetites and policies to a point where the public felt the city was respecting its needs and its pocketbook. Neighborhoods choosing to take service responsibility into their own hands would have structural biases against extensive corruption, because of close supervision of association officials by memberships, and the relatively miniscule sums involved in service arrangements with contractors.

– Renewed Neighborhood Feeling

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Critics of the left and the right have remarked on the precipitous decline of neighborhood life in many cities. In the early part of this century, a variety of informal social networks often gave residents a sense-of-belonging and an assurance of human contacts. Today this spirit is absent from a great many urban neighborhoods because of the interplay of a variety of factors. With the expansion of governmental social service programs, residents of neighborhoods tend to look less towards each other, voluntary organizations, or religious institutions for support. Zoning and land-use planning decisions have transformed complex, self-renewing neighborhoods into monotonous, solidly residential or commercial areas. To compound the problem, the rise of reform movements has weakened the political clubs whose captains once personally tended to the concerns of constituents.

Establishment of automatic-membership neighborhood associations can help to bring about a long-needed renewal of neighborhood feeling in many communities. By stipulating that tax credits could be provided only to those associations enjoying the membership of all property owners in a neighborhood, the approach would spark a renewal of neighborhood interactions. If successful in forging a deed-based, automatic-membership organization, residents would be assured of a flexible, self-funding framework for neighborhood social activities and cooperative efforts. One member of an existing deed-based association has described the benefits as follows: "There is a definite tendency for pride in ownership and a corollary intensity of responsibility in maintaining association-owned facilities. There's also a noticeable quality of respect for each other's property. . . In my estimation, at least some of this stems from a feeling of individual responsibility that is engendered by a neighborhood such as this. There is unique social 'pressure,' not to conform, but to be good citizens."

Encouraging formation of neighborhood associations through tax credits can help preserve and revitalize communities. The opportunity to save on taxes, improve quality and responsiveness of local services, and foster civic-minded and cooperative efforts could prove to be a highly attractive alternative to existing service delivery patterns. Rather than being forced upon neighborhoods, the tax credits would be offered only to those voluntarily joining together for meeting residents' needs.

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The extent of service transfer, and the methods used for service provision, would be up to members of the associations themselves.

Steps Towards Implementation

Despite the advantages of the concept, a number of challenging issues arise when implementation of the proposal is considered. Decisions on these issues can greatly affect the technical and political feasibility of the tax credit proposal.

1. Establishing the Terms of the Credit

Allowing neighborhoods to withdraw from municipal service areas raises the specter that rich neighborhoods will secede entirely from their political jurisdictions, leaving less affluent neighborhoods to fend for themselves. The tax credit proposal can avoid this objection by linking the amount of relief from taxation to a neighborhood's *consumption*, rather than generation, of public revenues. Under such an approach, municipalities would establish the costs of services delivered by city departments on a neighborhood-by-neighborhood basis. An independent auditing body could ensure the accuracy of budgets prepared by the departments. This need not entail repeated skirmishing between the departments and the auditing agency. Provided that the true overall costs of each department's services were initially determined, the departments would have an incentive to allocate costs among neighborhoods as accurately as possible. Neighborhoods with unduly high costs would be most likely to organize self-help services to reap windfall tax credits.

Once cost estimates for municipal service delivery were known, neighborhoods would have the option under the reform of arranging for alternative service delivery. An initial step by residents would be to estimate the costs of replacing city services with appropriate neighborhood workers or nongovernmental contractors. The property owners would then decide whether cost savings and service improvements justified the establishment of an association representing all holders of lands and buildings in the neighborhood. If full representation were achieved, a deed-based, automatic membership association would be formed. Members would be able to pocket through the tax credit the net savings from transfer of service delivery from the public to the private sectors. The savings in each

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neighborhood would be proportional to the extent of waste in municipal services for its area.

To ensure that poor neighborhoods shared in the benefits, the tax credits might incorporate a somewhat novel feature. An unadorned tax credit might be attractive to a home-owner in an affluent neighborhood paying thousands of dollars in property taxes a year. It is unlikely, however, that a home-owner in an impoverished neighborhood would feel the same incentive to organize a self-help association, if the reward were to be merely lifting a small property tax obligation. As a way around this problem, municipalities could establish dollar-for-dollar tax credits by which well-off taxpayers could donate money to the poorer neighborhood associations, equivalent to the savings that resulted from the transfer in service responsibilities. Homeowners in neighborhoods of all income levels would thus receive direct financial benefits from creation of alternatives to today's needlessly costly city services.

2. Defining Neighborhood Association Boundaries

After terms for the tax credit are found, a municipality can turn its attention to what constitutes a neighborhood for the purposes of the reform. Conventional definitions hold that neighborhoods are populated areas adjacent to major physical features such as parks, prominent buildings, intersections, or natural objects in a community. Boundaries of a neighborhood are usually located along the lines of socioeconomic gradients in population near the physical feature, and/or along natural and manmade discontinuities (rivers, hills, canals, streets). Contours of zip code zones, community planning districts, and special service districts in practice tend to be highly sensitive to neighborhood boundaries.

Even when clear demarcations exist, neighborhoods may not be an efficient unit for production of local services – especially those services that rely on expensive centralized infrastructure. Capital intensive services such as water, sewers, and transportation do not lend themselves to operation on a neighborhood level. For economies of scale to be realized in these and related services, the Advisory Committee on Intergovernmental Relations recommends a population base of between 25,000 and 250,000. Medium sized communities, moreover, seem to be the most cost-efficient for delivery of sanitation and fire services. Yet small-scale units do appear to be economical providers of

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such labor intensive services as education and police. Research by Niskanen and Levy for the California Local Government Reform Task Force in 1973 found diseconomies of scale in school systems with student populations of over 2500. Police departments exhibit similar tendencies: in a study for the Rand Corporation, Robert K. Yin and Douglas Yates concluded that "street level governments" would lead to improved managerial efficiencies and lower costs for police services. Neighborhood associations might be able to enjoy significant savings in these services with populations ranging from 4000 to 10,000. For the more capital intensive services, joining with nearby associations would enable neighborhoods to achieve virtually any economies of scale without public sector involvement. It is likely that the possibility of major economies – and improved service levels – would encourage small associations to federate for large-scale contracting of services.

Persuasive reasons exist for giving neighborhood residents as free a hand as possible in defining the boundaries for their associations. If left to city departments, administrators could sabotage service transfers by drawing neighborhood boundaries that would be uneconomical for self-help associations. On the other hand, property owners would have strong incentives to make the boundaries of their neighborhood associations correspond to service delivery areas of maximum efficiency if left essentially on their own. An independent body, accountable to citizens rather than municipal departments, might influence the process by outlining borders of maximum tax-saving opportunity for association formation and federation. The city's role should be limited to stipulating that associations be geographically contiguous, that they include no "islands" of nonmembers, and that they could modify service arrangements or dissolve themselves.

3. Making the Credits Politically Palatable

Depending upon the circumstances of a community, additional features might be incorporated into the tax credit proposal to increase its political attractiveness. In poor neighborhoods, where the bulk of residents rent rather than own homes, concern could be especially great that the only a few well-to-do property owners would benefit from the formation of a neighborhood association. The landlords could be expected to counter that inclusion of renters as association members would

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lead to neglect of the neighborhood's future interests. A renter-dominated association would have an incentive to arrange for self-help services that maximized immediate savings but short-changed investments for long term.

In response to such an impasse, municipalities might impose extensive procedural controls designed to balance landlord and tenant interests within neighborhood associations. Provisions of this sort might become arbitrarily politicized and discourage landlords from joining together to form associations, particularly in areas that might benefit most. A more promising resolution – allowing for responsiveness to specific neighborhood needs – would be to make continuation of property tax credits for landlords in an association contingent upon the periodic approval of neighborhood renters. In this manner, landlords and tenants would have common interest in reaching an understanding that provided immediate benefits for renters, while ensuring that services would also improve neighborhood conditions in an enduring way.

A similar approach can aid prospects for the reform in municipalities where local government employees wield enough power to obstruct the use of tax credits for neighborhood self-help. Without doubt, the reform can appeal to activists in taxpayers' organizations and neighborhood groups, and to the growing number of citizens disturbed by the services received for their local tax dollar. Against these constitutencies would lie the municipal employees unions, which could be expected to vigorously resist a reform that at best would force them to adopt work practices similar to those of more productive private sector providers, and at worst would demonstrate that their jobs were superfluous. Hostility from city workers would be greatest in those services that were managed most poorly, because risks of layoff would be highest within them.

To ease opposition by employees of badly-administered departments, the tax credit proposal could be adapted in a way that would result in shared benefits. Members of neighborhood associations need not be the only ones to receive savings from privatization; a portion of the savings could be designated for rank-and-file city workers laid off by the neighborhood withdrawals. If supplemented by access to city equipment idled by the service transfers, such aid would enable discharged

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municipal employees to organize contracting firms of their own that would stand excellent prospects of winning business from the associations. First-hand knowledge of the service areas in question would give the new contractors an added edge over commercial competitors. It is possible that becoming independent of both city and union officials would appeal to a number of municipal workers.

Prospects of an adverse reaction by the federal or state government might also influence the political attractiveness of the tax credit proposal. Withdrawal of neighborhoods from tax-financed services would be strongly opposed in many quarters if it entailed a substantial loss of funds from revenue sharing or block grants. Fortunately, indices of income per resident count about twice as much as do per capita measures of "tax effort" in determining a community's eligibity for federal revenue sharing, and revenue sharing contributes only 4.2 percent to an average municipal budget. Even massive transfers of services to neighborhood associations would thus affect just a portion of this aid, an amount small in comparison with the net savings to residents from tax credits. The effects of the reform would be even slighter upon block grants and state aid, because measures of poverty far outweigh tax effort criteria in these programs.

While responses from aid programs would do little to hinder the proposal, tax-related policies at both the state and federal levels might limit the feasibility of offering property tax relief to neighborhood self-help associations. A double standard now prevails in federal tax policy towards payments for local services. Any property tax payments may be deducted when calculating income tax liabilities, but assessments paid to homeowners associations for identical services are not deductible. The Internal Revenue Service in the past has also taxed surpluses accumulated by the homes associations for repair and replacement of expensive facilities, although it has recently eased its treatment of such funds. In some cases, state constitutions prohibit municipalities from offering local tax relief except to religious, philanthropic, and other "public benefit" institutions.

Yet tax relief at the local level is an increasingly popular instrument for achieving desired objectives. In more than 20 states, municipalities now offer abatements, exemptions, or moratoria on property tax payments as an inducement for

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investment by industry. Cities such as New York have encouraged the rehabilitation of deteriorating structures through property tax abatements. New York's J-51 tax relief incentives have prompted hundreds of developers to renovate buildings for new housing. If it is politically feasible to offer tax relief to owners of commercial properties, making tax credits available to home-owners as well should find support among the public.

Conclusion

At a time when many municipalities are struggling to get by, neighborhood associations represent a force of great power for revitalization. Block associations, despite free riders, have managed to partially stem urban decay and to deliver a wide range of self-help services. Homes associations have used deed-based covenants to establish automatic membership provisions that overcome the free-rider problem, thereby acquiring the stability and financial strength to deliver an even broader set of services to residents than do block associations. Such automatic membership associations are now found in more than 20,000 residential developments around the country, providing economical private alternatives to municipal services.

The proven capabilities of neighborhood associations can be expanded by offering tax credits to property owners in proportion to the service delivery burdens removed from the city budget. Large potential tax savings create an incentive for residents of presently-unorganized neighborhoods to establish new deed-based automatic membership associations. The tax credits further resolve the problem of double payments, which to date has discouraged neighborhood associations from realizing their potential.

Traditional approaches to urban policy are leading to a dead end. While some politicians may urge that more tax revenues be spent on municipal services, further infusions of revenues will not resolve the pathologies of a failing system. Growing taxpayer and neighborhood movements augur increasing pressure upon bureaucratic forms of service delivery. Offering tax incentives for self-sustaining neighborhood associations provides a welcome alternative to more unresponsive and costly government.

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After Afghanistan

FRANZ JOSEF STRAUSS

The reckless invasion of Soviet troops in Afghanistan made cruelly clear how fast the general political situation in the world can change; how quickly the danger of war can arise from a peace which had been declared more and more secure; how for a third time this century, much that has been taken for granted is at risk. Moscow's military action confirms my judgment that the ninth decade of the 20th century will, in every respect, be unusually difficult, particularly prone to crises, and unpredictable. It will be a period of historical dangers from within and without.

Here I am thinking of the events in Iran and the dangers they pose for the peace of the world; the Arab-Israeli question, which is still unsolved; the O.P.E.C. monopoly and the growing readiness of producing states to use oil as a political weapon; the arc of crises from Afghanistan to South Africa; those two sources of crises: the Far East and Latin America; and finally, the dependence, vulnerability and exposure to blackmail of our industrial mass societies – whose stability is decisively determined by the supply of energy and raw materials in a sufficient amount and at reasonable prices.

In an age in which the most modern technology of war is accessible to a steadily growing number of countries, each of these sources of conflict by itself might expand into an extensive and uncontrollable conflagration. But their coincidence creates a highly explosive mixture which could be detonated by some future crisis of world politics. To prevent this is the historical task of this forthcoming decade.

An appropriate response can only be found when the free world dismisses all illusions and self-deceptions and returns to a *realistic* policy of detente. Real detente, however, is only possible when three conditions are fulfilled. First, what detente is and is *not* must not be defined or dictated only by the Soviet rulers. It is politically and morally unacceptable that speaking up for the rights of man or for the entire German people's desire for unity, peace, and freedom should be denounced by the East as a plot against detente or a relapse into the Cold

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War. Secondly, detente postulates an approximately equal military balance. It must not lead to the minimization, or even denial, of the military danger, to the dismantling of defensive readiness, to political and psychological neutralization, or to undermining the European community or the North Atlantic Alliance. Thirdly, detente must be geographically indivisible. Those in Europe who speak of peace, who wage wars by proxy in Africa, who move their troops into Afghanistan, who stimulate the outbreak of civil wars by the export of revolutionary ideology and modern weapons, who pursue a strategy compounded of world-revolutionary propaganda and imperialistic aims: those men do not further detente, they abuse it. Therefore the issue is not detente – yes or no; but, what kind of detente?

All people want peace; only fools or criminals favor war. We also know from history that peace cannot be ensured by indulging the brutal will to power – it is based on justice, conciliation of interests, and respect for the rights of man and nations. Few wars were started with deliberate intention. Most of them arose from neglecting the lessons of history, from underestimating the risks, and from carelessly crossing the border of the point of no return. This is the point the Soviet Union has reached in invading Afghanistan – "reached," not "transgressed." Therefore, the free world must drive it home to Moscow that it is moving along that borderline where events develop a dynamism of their own and where it is to be feared that they can no longer be controlled.

Now, I am not of the opinion that the present government of the Soviet Union intends to start a third world war or to bring about the great test of military strength by a military attack against central Europe. But equally clearly I have been warning for a long time of Soviet foreign policy which thinks in geostrategic dimensions and unswervingly seeks to realize its ideas – a combination of Russian imperialism and world revolution.

Behind the smoke screen of detente the Soviet Union has decisively changed the military balance in its favor by superarmaments which bear no sensible relation to its economic efficiency. The offensive components of army, air force and navy have been developed in an extremely powerful and rapid way. This potential enables Moscow to prepare for all military

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possibilities of any size and to be present all over the world. As far as these offensive systems – as, for example, the mirved medium-range SS-20 missile – endanger western Europe, they should be evaluated more as political than as military weapons. They are a means to exert political and psychological pressure, to intimidate western Europe and thus to prevent Europe from defending its vital interests together with America.

Supported by this military potential of pressure and threat, the Soviet Union pursues its expansive and aggressive policy also along the arc of crises from north Afghanistan to the south of Africa. It tries to control the sources of energy and raw materials, as well as the sea routes to the Western industrialized countries. Important to America, these resources are vital to Europe. Almost 70 percent of western Europe's crude oil imports compared with 30 percent of America's crude oil imports, are transported by sea around the Cape of Good Hope. So are 70 percent of western Europe's imports of strategic raw materials and 20 percent of its food imports. The power whose hand is on these energy supplies, raw materials, and seaways is the real master in central Europe. So Europe's future in freedom, peace, social and economic prosperity depends on whether, together with the Americans, it has the strength to protect those areas of interest in the Middle East and in Africa. I am no advocate of adventures in world policy. But simply to close one's eyes in the face of those geo-strategic menaces to the free world, because of political weakness in domestic affairs or party-political considerations, is a flight from political responsibility. Only if the partners in the Atlantic Alliance on both sides of the Atlantic agree that it is a matter of defending common interest will we have the strength to restrain the imperialism of the Soviet Union and to restabilize the balance of world politics.

Testing the Atlantic Alliance

To consider the invasion of the Soviet troops in Afghanistan as an aberration of a partner who is interested in real detente is fatal wishful thinking. Afghanistan is nothing but a preliminary objective in the long-term planning of the Kremlin on its way to communist world ascendency. With this action, however, Moscow has put the Atlantic Alliance to the test. This cannot

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be the moment to weigh the mistakes of the past (which on both sides of the Atlantic were plentiful). Faced with this global menace we must refrain from those petty considerations so that the undeniable process of growing alienation between America and Europe does not end in America backsliding into isolationism. Neither America nor Europe can afford that. On the contrary, it is necessary that, in these days of humiliation and provocation by the events in Iran and Afghanistan, Europe should be on the side of the United States without "ifs" and "buts." On the other hand this solidarity requires that the superpower U.S.A. does not treat Europe as a second class partner. Information and consultation with Europe must be early and comprehensive. In turn, the European partners should be ready to take global joint responsibility instead of passing the role of the policeman of the world to America and watching the action from the box seat of world history with helpful advice and occasionally sharp criticism.

The necessary common strategies can be developed without frictional loss only on the basis of this widely coordinated communication within the Atlantic Alliance, It will be of decisive importance to find more than merely a military answer so that peace will no longer be threatened by the tempting weakness of the free world. Full transatlantic solidarity on the basis of mutual coordination of political, economic, psychological, military, and technological measures is the only conceivable and historically possible way to cope with the problems of the eighties. It would certainly not be sensible to discuss these inevitable and common strategies based on division of labor in the open market.

Western Europe needs to be persuaded that America cannot be held responsible for deterrence and defense while Europe pursues detente and, for the time being, takes economic advantage of this distribution of labor. After all, Europe cannot expect America to take any risk in Europe's favor, while Europe itself shirks political joint responsibility for domestic weakness and misses no opportunity to jostle and offend its most important ally.

Western Europe – above all the Federal Republic of Germany in its particular dangerous situation at the dividing line between East and West – must know that, after the experiences of the past, America is no longer ready to force Europe to look

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after its security. Here I am thinking of the debates about the production of the so-called neutron weapon. Under pressure from the Soviet Union, Europe not only shifted the political responsibility for this onto the American president; but also the political morale of America was questioned by irresponsible comments of leading politicians – much to my regret, from my own country. This prevented a decision based on considerations of military technology which, in the present state of knowledge, it is difficult to excuse. It also badly damaged our relations with our most important allies. Today Europe itself must take charge of its foreign security and defense, and it must be ready to undertake the necessary long-term burdens and sacrifices. A responsible politician must not only realize this; he must also act according to this insight. Thus, when the budget of the Federal Republic for 1980 was discussed, my political friends and I urgently requested the federal government to fulfill the three percent increase in the defense budget which had previously been agreed upon by NATO. We failed because of the majority in Parliament. Since we know very well that that forthcoming tasks cannot be accomplished by mere shifting of budgetary means, we signaled the federal government that we are ready – even in an election year – to postpone our sociopolitical demands in favor of the policy of security. If the federal government takes the initiative in this direction we are also ready to delay – completely or partly – our proposals regarding tax relief (which, after all, for 1981 amount to no less than approximately $9 billion).

In the dispute between the different social systems, the Soviet Union has failed in all fields except the military. It was not least this failure that caused the Soviet Union to switch over to detente as a continuation of class struggle by peaceful means. Thus the Soviet Union pursued its purpose – as we know, with some success – to make up its arrears with the West in economics, science, and technology by massive transfers of money, technology and economic resources. It is clear that, in a period when tension has been deliberately increased, western economic policy cannot remain unaffected. It must be regarded and used as a function of foreign and security policy. All these strategies can only be effective if the Soviet Union does not succeed in splitting the unity of the West. It can easily be foretold that after the icy east wind following the Afghan crisis there will be

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very soon a strong campaign of detente towards western Europe. Even now the direction of this offensive can be seen in the Soviet media: America is being blamed for a frantic, careless, and imperialistic policy from which Europe should be detached in order to be able to enjoy the fruits of detente. Not a few comments of European politicians, even after the Soviet invasion of Afghanistan, show that such an attempt by Moscow is not entirely futile. In the face of the historical challenge of this decade, it should be the first task of western policy to ensure that Western and Third World awareness, stirred up by the shock of Afghanistan, will not once more be dazed and lulled to destruction in the Muscovite manner.

ERRATUM

Professor David Martin, who reviewed three books on religion and politics in our last issue, is Professor of Sociology at the London School of Economics and not, as we wrote, Professor of Political Science.

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Can Covert Action Be Just?

ERNEST LEFEVER

Covert operations abroad are designed to alter political, economic, or military realities. They are the most controversial of all intelligence activities because in addition to secrecy and deception, they – like war – sometimes involve lethal force. Covert action takes many forms, from giving financial support to a clandestine radio station, a publication, or a party in a crucial election to providing military or paramilitary aid to certain factions. Covert operations are undertaken to prevent developments deemed inimical to the interests of one's country and to create conditions in which these interests will be furthered.

In the post-Vietnam retreat from reality and responsibility, the U.S. military and intelligence establishments have suffered in both absolute and relative terms. Our conventional capabilities have declined while those of our chief adversary have grown, as our reverses in Angola, Ethiopia, Iran, and Afghanistan attest. Former Secretary of State Henry Kissinger said the "emasculation of the CIA" had contributed to the failure of U.S. policy in Iran in three ways: by making intelligence analysts overly cautious, by practically depriving us of "covert capabilities," and by altering the balance of expectations within Iran (*Washington Post*, February 26, 1979).

Dr. Kissinger added:

> As late as five years ago opponents of the United States in . . . Iran might well have feared . . . that we simply would not tolerate an assault on the political structure of so close an ally. The various congressional investigations – which incidentally have found very few transgressions – have, however, had the practical result of exhibiting our operating procedures in so much detail that opponents have a precise idea of what we can and cannot do. And congressional restrictions have tied our hands even more. Destroying the mystique of the CIA is in itself a psychological handicap.

Dr. Kissinger properly observed that the blame for our inability to respond effectively in Iran in 1978 must be shared

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by Congress, the State and Defense departments, and the White House. He might well have added the prestige press. In the latter half of 1974 there developed what could be called a concerted campaign against CIA covert activities in certain sectors of the Congress and the media. On September 8, the *New York Times* reported unauthorized disclosures of CIA activities undertaken during the Allende regime. On December 22, the *Times* printed the first of a series of sensational, page-one stories by Seymour Hersh reporting alleged illegal CIA activities in the United States. On December 30, the Hughes-Ryan Amendment to the Foreign Assistance Act became law. In the name of congressional oversight this amendment has had the effect of bringing the already reduced covert activities abroad to a virtual standstill by requiring the Executive Branch to report on each covert action to eight committees in a "timely" fashion, interpreted to mean near the start. And under the rules of the two houses, *any* member may have access to this information. It is not difficult to imagine the chilling effect of this reporting requirement.

In addition to the *New York Times*, the other prestige media, particularly the three commercial TV networks, bear considerable responsibility for crippling the CIA by sensational, one-sided, and out-of-context reporting. One chapter in the recently published study *The CIA and the American Ethic* examines the performance of the TV evening news shows of ABC, CBS, and NBC from January 1974 through October 1978. During these 58 months, less than 5 percent of the intelligence news was devoted to Soviet-bloc agencies, while slightly more than 95 percent dealt with the CIA. Fewer than five references to the Soviet KGB were found during the entire period. This portrayal of the external arena as a political and moral vacuum devoid of threats and adversaries made the CIA appear as a villainous Don Quixote tilting at vaporous windmills.

The distortion was exacerbated by the one-sided picture of the CIA that emerged from the screen. Its activities were usually reported as illegal, immoral, or insufficiently accountable. Of all CIA stories (measured in minutes), 68.2 percent reflected unfavorably on the agency, 13.9 percent reflected favorably, and the rest were neutral. The reporting on Chile was particularly lopsided. None of the network evening shows provided its viewers with anything approximating a meaningful context for understanding the dangers to U.S. interests during the Allende

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period, the massive activities of the KGB and its subservient Cuban intelligence arm, or Allende's assault against the Supreme Court, the parliament, and peaceful opposition parties.

The TV networks did not fully observe the spirit of the FCC's Fairness Doctrine or the letter of their own *Code of Broadcast News Ethics*, which says that news should be "accurate and comprehensive" and presented with sufficient information to give "meaning and perspective." More important, the medium that the majority of Americans rely on more than any other for their knowledge of current affairs had let them down in the crucial area of understanding the responsibilities of the United States in the face of multiple external threats.

This failure of the media reflects the larger failure of the liberal intellectual community – the "new class" – to understand the basic nature of the world struggle. As Jeane Kirkpatrick, Peter L. Berger, Irving Kristol, and others have pointed out,[1] these intellectuals seem to suffer from a perverse utopianism that tends to exaggerate the relatively minor sins of the West and the somewhat greater violations of civility by our Third World allies, while at the same time overlooking or even excusing the massive sins of the totalitarians. For them the threat is almost always from the Right, rarely from the Left. Some of these self-appointed custodians of rectitude even justify atrocities – e.g., Cambodia in the first years of the Pol Pot regime – if they are committed in the name of "revolution."

During the past five years the major organizations and leaders in the "anti-intelligence lobby" (an interlocking coalition led by the Institute for Policy Studies, the American Civil Liberties Union, and the Center for National Security Studies) have attempted to hobble the CIA in the name of civil rights at home and "liberation" in the Third World. Their definition of liberation often bears a striking resemblance to the rhetoric from Moscow and Havana.

1. See Miss Kirkpatrick's *Dictatorships and Double Standards: A Critique of U.S. Policy* (reprinted from *Commentary*) and Berger's *Ethics and the New Class* (reprinted from *Worldview*), both published by the Ethics and Public Policy Center, Washington, D.C.

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The Moral Case for Covert Action

Implicit in the foregoing analysis is the deeper moral question: Are foreign intelligence operations – particularly covert action, which involves secrecy, deception, and sometimes lethal force – compatible with the Judeo-Christian ethic? Can a free society engage in espionage and covert action without violating its fundamental values?

In times of great peril, American presidents have never hesitated to resort to espionage. In 1776 George Washington admonished his generals to "leave no stone unturned" in gathering intelligence against the British, and all our wartime presidents since have taken the same view. But what about intelligence in the twilight zone between peace and war, the condition in which we live today?

The security of the United States and the survival of our free institutions are among our highest values. But there are other values and interests. Ever since America became a world power it has defined its national interests broadly enough to respect – indeed, to include – the rights and legitimate interests of other states. To serve our national interests and values, we fought in World War II and thereafter forged a global security system to protect our friends and allies against foreign aggression and subversion. We have supported the genuine self-determination of peoples. Our postwar policies have been well intentioned, though some have failed to achieve the desired objectives.

Foreign intelligence is a form of warfare. Like war, intelligence is an extension of diplomacy by other means. Hence all activities of our government in peace or war can and should be judged by the same fundamental political and moral standards.

The doctrine of the "just war" has been an essential part of the Western moral tradition for a thousand years. This doctrine, which defines the proper relation between military force and political responsibility, is deeply rooted in Catholic and Protestant ethics. Although it specifically relates to military conflicts, the just war theory, as Paul Ramsey has noted, can be applied generally to the problems of "political authority, political community, and political responsibility."[2] In short,

2. Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner's, 1968), p. xi; see also p. vii-xvii and 178-88. See also Robert W. Tucker, *The Just War: A Study in Contemporary Doctrine* (Baltimore: Johns Hopkins Press, 1960).

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this Western view of statecraft has direct relevance to all facets of foreign policy and hence provides a moral yardstick for assessing the justice and rightness of intelligence operations.

The just war theory does not tell us what specific policies a government should undertake. Such decisions must be determined by the nature of the problems faced, the resources available and other circumstances. But it does advance three standards for determining what is acceptable according to the Western moral tradition: is the objective of the action just? Are the means employed both just and appropriate? Will the chances for justice be enhanced if the action succeeds?

1. *Is the objective of the action just*? Different actors in the international drama naturally define justice differently, often to suit their own immediate interests. But according to Western norms, embodied in international law and the U.N. Charter, military action taken solely to conquer or subjugate other peoples is illegal and unjust, whether carried out by overt military action or by covert means, while military action designed to defend one's own or an ally's territory against external aggression is justified. Aggressors usually attempt to justify their action by asserting that it was undertaken for self-defense; Hitler so described his attack on Poland in 1939. The situation is often confused and complex, but the distinction between the aggressor and the victim is usually clear. Few outside observers would characterize the Soviet conquest of Afghanistan as just.

A just war (and, by extension, a just covert operation) may never be undertaken for trivial motives, such as the desire to bolster the ego of a ruling group, or for inappropriate purposes, such as an effort to reform the domestic institutions of other societies.

2. *Are the means employed both just and appropriate*? Just ends can be betrayed by unjust and inappropriate means. The force used must be proportionate to the objective. Excessive force is always wrong, though it is often difficult for a commander to know how much force is required to achieve a specific objective. But in a just cause, such as repelling an invader, the use of too little force is wrong also, because it may prolong the struggle or even enable the aggressor to succeed, thus causing a greater loss of life or a setback for justice and independence, or both.

Certain uses of force are categorically wrong. These include

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the wanton or purposeless destruction of life or property. Hence the U.S. military code prohibits the deliberate killing of civilians, troops who are surrendering, and prisoners of war, and in fact requires that these groups be protected and cared for. Because of our principles, the U.S. armed forces in Vietnam went to great lengths, great expense, and substantial risk to spare civilians and help resettle refugees.

For the same reason, the American people were shocked when they heard that U.S. soldiers had killed twenty-two or more unarmed civilians in My Lai in 1968. On the Communist side, in contrast, vengeance or terror killings, such as the cold-blooded murder of at least 2,700 civilians (but perhaps as many as 5,000) in Hue during the 1968 Tet offensive, and the shooting at refugee columns in 1975, are rationalized by a peculiar Leninist logic that transforms innocent victims into necessary targets for the success of the "revolution."

Intelligence operations frequently make use of unusual means – such as secrecy, deception, and violence – that are not permissible in normal peacetime pursuits. These extraordinary means present difficult practical and moral problems. In a just war, people are killed, and "peacetime" intelligence is often an extension of warfare, though with far less loss of life.

3. *Will the chances for justice be enhanced if the action succeeds*? The ultimate practical (and in a real sense moral) test of political behavior is not the ends sought or the means used but the consequences that result directly from the action. (The actor, whether an individual or a government, cannot be held accountable for consequences over which he had no control.) However noble the end and just the means, military or political action is not justified if it has little or no prospect of achieving its objective. Assessing the chances of success or failure is a moral as well as a practical imperative. A parable of Jesus makes this point: "What king will march to battle against another king, without first sitting down to consider whether with ten thousand men he can face an enemy coming to meet him with twenty thousand? If he cannot, then, long before the enemy approaches, he sends envoys, and asks for terms" (Luke 14:31, 32).

The requirement for just consequences can be expressed by this question: If the military action succeeds, will the post-belligerency situation be likely to provide a better chance for

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peace, security, justice, and freedom than the antecedent situation? Which, for example, would have been the better outcome for World War II, an Allied victory or an Axis victory?

The just war theory is especially pertinent to wartime or other situations in which coercion is an accepted means for one or more parties to pursue its objectives. Since 1945 we have been living in a condition of Cold War in which Moscow, Peking, and their clients employ both peacetime and wartime (i.e., military) means to achieve their expansionist objectives. Confronted by these dangers, the United States, its allies, and other threatened governments are justified in employing unusual and even coercive means, as long as they meet the three "just war" standards.

Let us then apply these standards to three well-known instances of covert action. The CIA's covert subsidy to the Chilean newspaper *El Mercurio* during the Allende regime clearly meets the criteria with flying colors. Its objective was just – namely, assisting a popular Opposition newspaper to continue publishing against the government's extra-legal attempts to silence it. The means employed, a modest subsidy, were both just and appropriate. And the consequences of this subsidy were to enable the Chilean people to continue receiving information from non-state sources. Why can't the *New York Times*, for instance, see that the consequences of inaction in this instance would have been an infringement of press freedom and a reduction in the diversity of information available to the Chilean people?

But the Bay of Pigs operation does not meet these same standards. Its objective was certainly just and the means employed, namely armed insurrection, the only available method of ousting a brutal and well-armed dictatorship like Fidel Castro's regime. If the Bay of Pigs were to be ruled out on those two scores, then Castro's rebellion against Batista would fall as well. However, once the attempt to destroy Castro's small air force failed and there was no U.S. decision to provide the Cuban exile force with air cover, then the operation was almost bound to fail. It cannot be morally right to risk lives and engender expectations of justice and freedom without a reasonable prospect of victory.

Yet an operation rather similar to the Bay of Pigs actually succeeded – the 1953 coup which overthrew the Mossadegh

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regime in Iran and restored the Shah to his throne. This can be defended on every important point. For the small price of hiring a few prostitutes and taxi-drivers to march and demonstrate against Mossadegh, an unstable, disruptive and anti-American regime was replaced by a friendly and responsible government that provided twenty-five years of internal and international stability. It was, like all neighboring regimes and its own predecessors, a despotism that maintained order by dubious and sometimes brutal methods. But, unlike its neighbors and predecessors, it was a relatively enlightened despotism, which introduced land reform, modernized the bureaucracy, developed industry, expanded education, and established the civil rights of women and minorities. Full democracy would, of course, have been ideal. But there is some truth in the Shah's remark that he would behave like the King of Sweden when his subjects behaved like Swedes. What matters for our argument is that the coup engineered by the CIA and British Intelligence actually did enhance the prospects for justice and stability in Iran.

A Changed Climate

The Soviet conquest of Afghanistan, coming in the wake of the protracted crisis in Iran, has, it is said, brought to an end the post-Vietnam paralysis of American power. Some Americans (including President Carter himself), who had favored curbing the CIA, are now asking that some restrictions be removed. On February 8, 1980, the Senate Intelligence Committee proposed a new CIA charter that would limit the requirement of prior notice of covert activities to two committees and would virtually exempt the CIA from having to disclose information under the Freedom of Information Act.

These are moves in the right direction, but one should be wary of the foul-weather friends of national security who become concerned only when the blood is spurting. What America needed before Afghanistan, and needs now, is a significant upgrading of our military and intelligence assets in the face of growing Soviet might, determination, and adventurism in vital areas around the globe. A central element in this upgrading is a recognition that well-conceived covert operations abroad are politically necessary and morally right.

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Encouraging Future OPECs

JOHN R. HANSON AND MORGAN O. REYNOLDS

The Organization of Petroleum Exporting Countries was formed in 1960 and for the first ten years of its life was completely ineffectual: oil supplies were abundant, prices low, and the cartel had no effective means of restricting production and raising prices. U.S. foreign policy during this period was sanguine about OPEC and its potential threat to our standard of living and national security. Some federal officials even viewed the cartel as a favorable development, on the grounds that cooperative action among major oil exporting nations would help stabilize the Middle East and thereby thwart Soviet ambitions in the area.

Today, Washington is exhibiting the same lack of foresight by sympathetically considering demands from Third World governments for a "New International Economic Order." A central component of the Third World program is an elaborate system of international agreements to stabilize the prices of primary commodities which provide the bulk of foreign exchange earnings in less developed countries. The proposal is formally known as the "Integrated Program for Commodities" (IPC), and was first endorsed by the United Nations Conference on Trade and Development (UNCTAD) in 1974. It has been reiterated ever since, most recently at the 1979 UNCTAD meeting in Manila.

Commodity agreements are not a new idea. In fact, attempts to support commodity prices using buffer stocks have existed for a long time. Even the now defunct Bretton Woods system of fixed exchange rates among currencies was a kind of commodity agreement. Governmental farm policies are examples on the national level. International agreements now operate with varying degrees of success in sugar, wheat, tin, cocoa, and coffee.

What is new about IPC is its unparalleled scope. Commodity agreements are proposed for 18 key products exported by less-developed countries, and these in turn would be linked by a so-called Common Fund. UNCTAD says that $6 billion must be supplied initially, with another $3 billion on call, in order to combat the problem of inadequate funding, which previously

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undermined independent buffering attempts in various commodities, such as sugar and tin. The fund would supply resources to finance buffer stocks, promote marketing, and extend loans and grants to less-developed countries (LDCs) to diversify their economies. Without doubt, the controllers of IPC would be a potent force in the world economy.

The Western response to these demands has not been enthusiastic but is increasingly compliant. Traditionally, European governments have been more receptive to the socialist notions espoused by the poor nations than the United States. Common Market countries, for instance, have operated an export stabilization program (STABEX) covering fourteen primary commodities on behalf of 46 less-developed countries for the last three years. Until the mid-1970s, however, the U.S. Treasury Department flatly opposed international commodity agreements. But American policy under the Carter administration calls for flexibility and bridge-building toward Third World governments. The U.S. government has agreed to contribute at least $30 million to IPC if it is formally established. U.S. negotiators signed the new International Rubber Agreement and have been involved in negotiations (currently stalled) on a Cocoa Agreement. The U.S. has also proposed a plan for an UNCTAD buffer stock in copper.

The diplomatic rationale for cooperating with commodity schemes is that they win friends in the Third World and help counter Communist influence in these countries. But against possible short-term benefits of partial accommodation to Third World political pressures, we must weigh the risks of substituting international bureaucracies, with substantial resources and interventionist authority, for the relatively free markets which prevail today in primary commodities. Our purpose in this paper is to show that a system of commodity agreements will not bring about the effects which U.S. policymakers seek. While some of the economic arguments are known already, we have new historical evidence about the link between price instability and economic progress.

Free Markets Versus Stabilization Programs

The announced objective of commodity agreements is to stabilize prices of internationally traded commodities. The proposed means to achieve stabilization is a bureaucracy that intervenes when the market price moves "too far." In principle,

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temporary declines in price can be forestalled by purchases, and temporary price increases prevented by sales from the authority's inventory of the commodity.

Proponents of commodity agreements claim several benefits that consuming and producing nations could gain from the attainment of a relatively low degree of price instability. "Certainty" is the foremost advantage claimed for consuming nations, although the argument that stabilization would help to control inflation has also become popular. The anti-inflation claim is wholly specious, but serious theoretical analysis has produced some models which show that the additional certainty from price stabilization could yield real benefits to risk-averse buyers of LDC products. As a matter of fact, economic research along these lines, much of it funded by LDC governments or their agents, has become quite fashionable.

However, it is not the West but the LDCs that commodity agreements are intended to help. The central argument is that price stabilization would accelerate economic development in LDCs by eliminating wild fluctuations in export prices (and revenues) which, it is claimed, seriously retard LDC growth. Price fluctuations allegedly complicate investment planning, thereby reducing the rate of capital formation. Private plans in agriculture and mineral industries are disrupted when prices change sharply; even starvation among peasant farmers is a possibility.

The arguments for explicit intervention to stabilize markets rest on two unstated propositions: first, that private mechanisms do not adequately protect market participants against the risk of fluctuations in price, and second, that bureaucratic action actually stabilizes price. Neither proposition has much theoretical or empirical support.

World markets already provide mechanisms for dealing with price fluctuations. Producers learn from experience about the behavior of prices in their markets and make long-run decisions based on long-run expectations, not short-run movements in price. They smooth out their consumption stream by setting aside funds when export earnings are high and by borrowing against future income when earnings are low. When export revenues fall, governments can and do draw down foreign exchange reserves and borrow from the International Monetary Fund and other creditors. Active futures markets in commodities allow speculators to specialize in risk and risk-avoiders to hedge

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against risk. The adequacy of these arrangements is a matter of opinion, but world trade in commodities is well developed, and producers and traders have a variety of devices for adjusting to new conditions.

The record of bureaucratic attempts to stabilize prices is unimpressive. If the bureau is to smooth things out by "leaning against the wind," bureaucrats must identify temporary fluctuations better than market participants. If bureaus did this successfully, they would make profits, on average, because they would buy when prices are temporarily low and sell when temporarily high. In practice, however, stabilizing agencies often lose large amounts of money. For example, it is well known that the Federal Reserve Bank of New York, which tries to "stabilize the dollar," consistently chalks up losses in its foreign exchange transactions. Furthermore, the New York Fed and other economic bureaucracies rely heavily on the private sector for ideas, information, and price forecasts, a relationship which comports poorly with the description of the omniscient economic bureaucrat depicted in the textbooks.

Commodity agreements, therefore, do not trust in bureaucrats to identify temporary price movements; instead, minimum and maximum intervention prices are fixed through international negotiation. Fixed price agreements nevertheless experience the same loss-generating and de-stabilizing behavior as more flexible interventions do. Price fluctuations in coffee, sugar, and rubber have been greater in agreement years than in non-agreement years. Although the opposite was true of wheat and tin, it was due mainly to independent operations in these markets by the U.S. government, rather than to the commodity agreements. Periodic "blow outs" in price are not unusual because the stabilization authority eventually works against market realities and is overwhelmed. For example, suppose that technological innovations make it cheaper to extract a certain metal from low-grade ore. The long-run price will tend to fall, other things being equal, and persistent purchases to support the price will produce an indefinite accumulation of stock by the stabilization authority. The bureaucracy will insist that they be granted authority to restrict production, and intervene in other ways, but the price policy generally collapses long before that happens.

These and other observations about the ineffectiveness of commodity agreements ordinarily would be conclusive, but not so

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in today's moral and political climate. In defiance of experience, pro-stabilization research and policy has caught the fancy of economists, bureaucrats, and politicians in the international community. Prominent churchmen, including the Pope, echo the LDCs in decrying the income gap between the rich and poor nations in the world. Influential publications of the Council on Foreign Relations have become more receptive to the economic proposals of the LDCs. In this atmosphere, it is vital to ask whether history shows, as Third World spokesmen claim, that export price instability is a serious obstacle to economic development. Unfortunately, economists and historians have not pursued the subject to any significant extent, with the result that unsubstantiated claims have become widely accepted.

Historical Evidence

The standard objection to the use of historical evidence in discussing contemporary issues is that present problems are not like those of the past, and that therefore little can be learned from history. In the field of international trade and economic development, this attitude has discouraged historical study, especially in connection with export instability. For example, interest in the trade experience of nations that enjoyed rapid economic development during the second half of the 19th century is barely flickering today because it is believed that the opportunities for growth through trade were vastly superior then as compared with the opportunities available to today's LDCs.

Yet the export situation of countries such as the United States, Australia, Argentina, and other European offshoots resembled that of currently developing countries because they were exporters of primary products to more advanced countries overseas. During the 19th century Argentina, Australia, Canada, Cape of Good Hope, New Zealand, the U.S., and Uruguay made exceptional economic progress and earned almost all of their foreign exchange from the sale of primary products in unregulated world markets. The possibility that comparisons with today's LDCs may be instructive cannot be dismissed easily.

To make these comparisons, Table 1 shows levels of price instability for 23 commodities over 20-year periods during 1850-99 and 1953-72. The latter is a standard reference period

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in modern studies and data from the 19th century are grouped into comparable 20-year periods. A common measure of instability, the standard percentage deviation from trend in percentage terms, is used. Commodities are grouped by whether they were predominantly exports from European offshoots or LDCs, and the last column lists 16 products that would be covered by the "Integrated Program for Commodities."

TABLE 1

Commodity Price Fluctuations, 1850-99, 1953-72, EXP Index

	1850-69	1860-79	1870-89	1880-99	1953-72
Less-Developed Countries					
Coffee	16%	21%	26%	32%	17%
Hemp	20%	18%	13%	15%	
Indigo	12%	14%	11%	9%	
Jute	15%	14%	10%	11%	16%
Nitrate of Soda	12%	11%	12%	9%	
Rice	14%	8%	8%	10%	14%
Sugar	12%	8%	13%	14%	42%
Tea	7%	5%	4%	2%	9%
Tin	19%	22%	23%	19%	10%
LDC Average	14%	13%	13%	13%	
Non-European Developed countries					
Beef	9%	7%	27%	26%	25%
Copper	14%	11%	17%	20%	24%
Cotton	36%	36%	10%	9%	11%
Hides	24%	14%	11%	13%	
Linseed	10%	9%	6%	8%	
Mutton	7%	7%	8%	7%	
Timber	11%	8%	9%	6%	
Wheat	21%	13%	10%	14%	5%
Wool	12%	12%	11%	12%	14%
NEDC Average	16%	13%	12%	13%	
Bananas					8%
Cocoa					28%

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Iron Ore					11%
Rubber					17%
Sisal					22%
Grand Average	15%	13%	13%	13%	17%

NOTE: Nineteenth-century prices are quotations from the British market. SOURCE: A. Sauerbeck, "The Prices of Commodities and the Precious Metals," *Journal of the Royal Statistical Society*, XLIX, 581-648. World Bank, *Commodity Trade and Price Trends* (Washington, D.C.: World Bank, 1974). Sauerbeck's 1886 article was updated annually, so that his price series extends into the twentieth century. The products listed in the table present all of the major commodity exports of NEDCs and LDCs that Sauerbeck lists.

Annual price variation for exports from European offshoots ranged from 12 to 16 percent during the 19th century. By comparison, the grand average among the 16 commodities exported by LDCs was 17 percent in the post-World War II period. This suggests that modern price fluctuations in commodities are more severe for the LDCs than those experienced by European offshoots one hundred years ago. However, a standard statistical test, the t-test, shows that these differences are not large enough to be statistically significant.

The impression of negligible differences is also supported by the ranges in the two groups of data. The least volatile price for nineteenth century European offshoots was mutton (7%) and the most volatile, cotton (36%). By comparison, the most stable commodity in the LDC list is wheat (5%) and the most volatile, sugar (42%). Ironically, a commodity agreement had been in operation to stabilize the price of sugar.

Other comparisons from Table 1 reinforce the impression that there is nothing unusual about the price fluctuations in modern LDC exports. The average price deviations of LDC products during the nineteenth century was 13 to 14 percent, not much below the "intolerable" 17 percent for modern LDC commodities. The table also shows that LDCs and European offshoots experienced similar fluctuations for their respective commodity exports during the nineteenth century. Even if the

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price fluctuations are labelled "large" the successful nations cannot be differentiated from the laggards on the basis of the price fluctuations that they experienced.

Another version of the argument for price stabilization focuses on fluctuations in the commodity terms of trade (i.e., the amount of imports a unit of exports can buy). The claim is that price instability for LDC exports has caused extraordinary fluctuations in their terms of trade, thereby harming economic development. This claim fares no better against the evidence. During the nineteenth century, European offshoots, like today's LDCs, experienced a high degree of instability in their terms of trade relative to advanced countries. The evidence in Table 2 shows fluctuations in commodity terms of trade for several countries and regions during the 1890s, the only decade of the nineteenth century for which dates are available to make a reasonably large-scale international comparison. Twelve countries and four midwestern agricultural states are included; for the states, the terms of trade refer to all exchanges across state borders. The method of measuring fluctuations remains the same.

TABLE 2

Fluctuations in the Terms of Trade, Selected Countries and Regions, 1890-99

European Countries	
Belgium	.7%
France	3.1%
Germany	1.1%
United Kingdom	1.1%
Non-European Developed Countries	
Australia	8.7%
Canada	2.7%
United States	5.2%
Illinois	8.7%
Indiana	6.1%
Iowa	9.6%
Wisconsin	7.2%

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Less-Developed Countries	
Ceylon	5.8%
Chile	6.7%
Egypt	9.5%
India	6.5%
Jamaica	8.6%

SOURCE: D. North, *The Economic Growth of the United States*, 1790-1860 (New York: Norton and Co., 1966); C. Kindleberger, *The Terms of Trade* (London: John Wiley, 1956); T. Birnberg and S. Resnick, *Colonial Economic Development* (New Haven: Yale University Press, 1975); R. Wilson, *Capital Imports and the Terms of Trade* (Melbourne: Melbourne University Press, 1931); M. Urquhart, *Historical Statistics of Canada* (Toronto: The McMillan Co. of Canada, 1965); M. Simon, "The United States Balance of Payments, 1861-1900," *National Bureau of Economic Research* (Princeton: Princeton University Press, 1960). Also sources in fn. 5. J. Brown and R. Keehn, "Agricultural Terms of Trade in Four Midwestern States, 1870-1900," *Journal of Economic History* (September 1974) 592-609.

Instability in the terms of trade was greater for the European offshoots during the 1890s than for European countries – the same as the pattern for today's LDCs. The lack of a negative association between export instability and economic progress is especially clear in the midwestern states. Instability in the terms of trade was usually high for the midwestern states; this was common knowledge at the time. Yet per capita income in the Upper Midwest grew at 40 percent faster than the national rate between 1880 and 1900, and the number of farms and farm population in these states grew rapidly. These states quickly became known as the breadbasket of the world, driving the British farmer into alternative employment and prompting continental Europe to raise tariffs.

Many other statistical comparisons reveal marked similarities between today's poor nations and the now developed nations of the nineteenth century, with a major exception. Today's Third World countries export a larger share of national income than the European offshoots did, so that in a sense they are more dependent on world trade. For instance, the average ratio of foreign trade to GNP is around .40 for non-oil-exporting LDCs in the modern era and was roughly .25 for now developed

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countries in the nineteenth century. However, many of today's LDCs have trade-to-GNP ratios considerably below .40, and some of the European offshoots – for example, Australia (.37) – had high ratios in the nineteenth century. The participation of European offshoots in commodity trade was substantial by current standards.

A Policy Without Beneficiaries

An extensive system of international commodity agreements would not accomplish what its promoters expect. The agreements would not function as advertised, and more importantly, there is no evidence that perfect functioning would contribute to the economic development of the LDCs. The mainsprings of growth lie elsewhere.

The shrill complaints of the Third World about capitalism, imperialism, and so forth will not be silenced by the reluctant cooperation of the U.S. government in the commodity agreements, especially when the agreements are perceived as failing to have the desired effects. Further resources will be demanded and consumed without expanding world production. Yet expanding production is the only real hope for economic progress in the LDCs. The State Department policies of accommodating Third World demands for commodity agreements are no more likely to yield short-run political benefits than our OPEC policies. Further politicization of world markets in raw materials threatens to cost the West a great deal.

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Khomeini's Political Heresy

ELIE KEDOURIE

Watching the 1978-80 events in Persia the world has stood wide-eyed and open-mouthed in astonishment. A regime seemingly solid and powerful crumbled into dust under the impact of preachings and denunciations directed from abroad by a divine who had been an obscure exile for the previous fifteen years. The departure of the Shah was followed by the volatilization of his army, by a referendum instituting an Islamic republic, and later by one approving a constitution which gives supreme authority to the Ayatollah Khomeini – who, since he set foot back in Persia in February 1979, has anyway been accepted without rival as the final arbiter in all public affairs.

How these remarkable events came to pass; why the imperial regime seemed paralyzed in dealing with urban demonstrations and riots; to what the Shah's curious passivity and hesitancy during the fateful autumn of 1978 is to be ascribed; what role exactly was played in these events by the United States and the United Kingdom; and what advice they gave their hapless friend – to all these questions, in the absence of reliable and detailed evidence, no satisfactory answer is yet possible. But it does seem possible, on the other hand, to establish what political doctrine Khomeini propounds, and on what ground he bases his claim to the exercise of supreme authority – a claim now formally ratified by what is claimed to be a majority of voters in the recent referendum. This will throw some light on the intellectual crisis facing contemporary Islam as it grapples with the problem of political order in the modern world, and attempts to fashion a theory of political obligation out of its own traditional concepts.

Khomeini's political doctrine is essentially simple.[1] It is that the world of Islam, Persia included, has for a long time now

1. Some of Khomeini's speeches and declarations on current issues have been translated into English. The United States Joint Publications Research Service (Arlington, Virginia) has published two selections in translation: no. 1902 dated January 29, 1979, "Collection of Speeches,

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been the victim of Western aggression. This aggression has taken the form of imperialism, which is made necessary by, and in turn facilitates, capitalist exploitation. Imperialism and capitalism create moral corruption and thus, in addition, constitute a deadly threat to Islam as a religion and as a way of life. This theme has recurred in Khomeini's discourse over the years. To take one example, he declares in his lectures on *Islamic Government*:

> To achieve their unjust economic goals, the colonialists employed the help of their agents in our countries. As a result of this, there are hundreds of millions of starving people who lack the simplest health and educational means. On the other side there are individuals excessively wealthy and blatantly corrupt.

And again:

> How can we allow a handful of exploiters and foreigners who dominate by force of arms when they deprive hundreds of millions from enjoying in the slightest the good things and the pleasures which life bestows? The duty of the divines, as of all Muslims, is to put a stop to this oppression, and to strive for the happiness of millions of people and, by founding an Islamic government which will labor with a devoted zeal, to destroy and do away with tyrannical governments.

About this doctrine it may be said, in the first place, that it constitutes the total reversal of a trend which had, outwardly at least, become increasingly dominant in the Muslim world from the beginning of the nineteenth century until the end of the Second World War. Khomeini's doctrine, in other words, rejects Westernization as a way of safeguarding Islam and ensuring the welfare and prosperity of Muslims. But, in the second

Position Statements by Ayatollah Ruhollah Khomeini," and no. 1920, dated March 8, 1979, "Imam Khomeini versus Imperialism, Zionism, Reactionism." The Service has also translated the lectures on *Islamic Government* mentioned below; no. 1897 dated January 19, 1979. This translation is, on the whole, unsatisfactory. A French translation of *Islamic Government* has also been published recently. See also *Iran Erupts*, ed. Ali-Reza Nobari, published by the Iran-America Documentation Group, Stanford (California), December 1978. This work contains statements by Khomeini and one of his most prominent supporters, Abol Hasan Bani-Sadr as well as other relevant documents.

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place, like the doctrine of Westernization, Khomeini's doctrine also draws on Western thought and categories. For it is not by accident that his doctrine bears a family resemblance to the Marxist-Hobsonian doctrines which, with the triumph of Bolshevism and the rise of the Soviet Union to superpower status, have become the most popular and widespread doctrines in Asia and Africa. Nor is Khomeini the first or only proponent of these doctrines in the Muslim world. In the 1920s similar doctrines were put forward by Soviet Muslims such as Sultan Galier who, taking a leaf out of Marxism, argued that the Muslims were among the truly proletarian nations in the world, the real victims of European capitalism. These views were firmly suppressed by the Soviet authorities, and their authors liquidated. Again, in the decade immediately preceding Khomeini's sudden rise, the Libyan leader, Colonel Qadhafi, put forward his so-called third theory, in which the poor peoples of the south – Muslims included – were the downtrodden victims and the eventual heirs of the rich peoples of the north.

To say that the origins of this doctrine, whatever its variants, are ultimately European is not to say that it has no points of contact or affinities with Islam. Its anti-Western stance chimes in with the traditional Islamic antagonism towards Christendom which centuries of conflict had generated. The doctrine, again, in denouncing capitalism and its vices and corruptions, necessarily favors egalitarianism and collectivism as the balm with which to heal a diseased and moribund body politic. And in Islam, as it happens, there does exist a strong tendency to put the collectivity above the individual and to treat individual believers as equals. In traditional Islam these tendencies have not usually had political or economic consequences, but a doctrine which does preach the beneficence of such consequences will find an answering chord among the mass of the believers. This is particularly the case when the mass is discomforted and disoriented, and when its wonted train of life has been more or less violently disturbed. This will serve to explain why so many Persian city-dwellers, most of them probably recent immigrants from the countryside, and living squalid and hopeless lives in an alien environment, are so ready to listen to Khomeini's good tidings, to come out in demonstrations and processions, and generally to manifest a vibrant collective enthusiasm. It will also explain the devotion shown by Egyptians

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to the similar teachings of the Muslim Brethren, and even perhaps the recent bizarre attempt by a large and determined group, to seize the Grand Mosque, housing the sacred stone, the Ka'ba, in Mecca. This group was led by a *mahdi* bearing (as is foretold in the prophecies) the same name as the Prophet, whose appearance on the first day of the new century (again, as is foretold in the prophecies) will herald the restoration of justice to a world filled with injustice and oppression.

Khomeini's social and political doctrines may legitimately be described as radical. But this radicalism is not peculiar to Khomeini, nor to Persia and Shi'ism. It has spread in various parts of the Muslim world, whether Sunni or Shi'ite. But there is more to Khomeini than political and social radicalism. For this Shi'ite divine also propounds a no less radical doctrine concerning political authority and its legitimate exercise.

Khomeini is an eminent *mujtahid*: a divine learned in the law of Islam. Had he been a Sunni and not a Shi'ite divine it would have been most improbable for him to have played the role he has lately played, let alone to have attained such prodigious success in playing it. Fairly early in the history of Islam it became clear that Sunni religious figures were firmly under the control of the rulers, and this has remained the case till the present day. It is otherwise in Shi'ism, and Khomeini's independence, his following, and even his success (which seemed so unexpected) become intelligible in the context of Persian Shi'ism.

The Origins of Shi'ism

Shi'ism has its origin in the political conflicts which rent the nascent Islamic community shortly after the Prophet's death. Shi'ites hold that Ali, the Prophet's cousin and son-in-law, and no one else, was Muhammed's legitimate heir, specifically designated as such by the Prophet in his own lifetime. It follows that others who claimed supreme authority in the Muslim community were illegitimate usurpers. Shi'ites also came to believe that only Ali's descendants were the legitimate rulers of the Muslim community. The Shi'ites who are now to be found in Persia (as well as in Iraq, Lebanon and elsewhere) also believe that the twelfth descendant of Ali entered into a major occultation in the year 329 of the Hijra (i.e. 940 of the Christian era), that he is now alive but hidden, and that he will

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in due course reappear to reestablish a state based on justice and equity as revealed in the Qur'an. Hence the Shi'ites are known in the literature as Twelver Shi'ites.

For many centuries the Shi'ites led the life of a sect by and large without the benefit of a territorial base or political sovereignty. Indeed it was only from the beginning of the sixteenth century, with the establishment of the Safavids (who ruled Iran from 1501 to 1722 of the Christian era), that Twelver Shi'ism came to enjoy the benefit (and suffer the disadvantage) of being the officially established religion of Persia. During the long centuries of political powerlessness the main lines and details of Shi'ite theology and jurisprudence were established and distinguished from the teachings of the other Islamic schools. This, of course, was the work of generations of eminent divines who, in a manner akin to that of the rabbis in post-exilic Judaism, preserved the identity and coherence of their community. These divines, then, enjoyed a standing and authority denied their Sunni analogues. This standing and authority can best be expressed in the terms of Twelver Shi'ite doctrine itself, which holds that at the major occultation of the twelfth Imam (i.e. head or leader) the divines were collectively designated as his general agents. Prior to this major occultation, a minor occultation had occurred during which the Hidden Imam was deemed to communicate to his faithful through the intermediary of four agents. These received queries from the believers, transmitted them to the Imam, and came back with his answers "in his own handwriting." The last communication to be made in this manner was that which the last of the four agents disclosed on his death bed. In this last message the agent was told of his own forthcoming death and instructed that he should not designate anyone to fill his place – that the Imam will reappear but only with God's permission and after the passage of a long time when the earth has been filled with tyranny; and that in the meantime many would claim to have seen him, but such claims would be false. From the time of this major occultation, therefore, the Imam was incommunicado.

This doctrine of general agency meant in practice that the believers were to avoid appealing to the (usurped) authority of the ungodly rulers in whose territories they resided, and to regulate their communal and private affairs according to the rulings and judgments of their divines. The doctrine did not

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mean, and could not have meant or implied, that these divines enjoyed the infallibility with which the Imam has come to be invested in Shi'ite theology. They could not enjoy any of his prerogatives, or even claim to transmit his orders and injunctions, since, as has been said, after the major occultation, the Imam was *ex hypothesi* incommunicado. Like any other mortal, divines were fallible, and like any other mortal they could become guilty of wrongdoing. What distinguished them from their fellow-believers was their greater knowledge of the law, a knowledge which imposed on them special duties and responsibilities.

The doctrine of the Hidden Imam was to have significant consequences for the political theory and the political attitudes of Twelver Shi'ism. In the course of time the Imam came to be seen as the spiritual guide leading men to the inner meaning of the universe, and akin to the *axis mundi* around whom the spheres of existence rotate. His significance, in other words, came to be more soteriological and eschatological than political. The Imamate became a topic more for theology than for legal theory. The development of this Shi'ite mysticism has as its concomitant a depreciation of the political, and the inculcation of an attitude of patient expectation. This attitude, together with a belief in the esoteric significance of all appearance and all being, are indeed what until very recently outside observers chiefly associated with Shi'ism. Nor were they mistaken. From early on, a distinction was worked out in Shi'ism between Imamate, through which divine knowledge illuminates the world, and Caliphate, as actual rule over men.

Islam and the Persian State

All this might have meant that Twelver Shi'ism would, unlike Sunni Islam, see a separation between the realm of religion and the realm of politics: the disappearance of that caesaropapism which Islam fully shares with Byzantine Christianity, and the eventual development of a secular view of politics. Though the doctrinal prerequisites were there, such a development did not in fact take place. Why? It can perhaps be said that the Safavids, claiming descent from Ali, surrounded their rule with a religious aura which made it highly unlikely that a secular view of rule could emerge. Such an aura further enhanced the position of the monarch, who had by then come to be traditionally revered

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as the shadow of God on earth. Though the idea of the ruler as the shadow of God on earth is pre-Islamic, by Safavid times it had become fully assimilated into traditional political attitudes. It provided an explanation and justification of the rule of a king who dispensed and guaranteed justice in society. This theory was distinct from the Shi'ite theory of the Imam as a descendant of Ali, ruling by virtue of an unbroken line of designation from the Prophet onwards.

What attitude did the Shi'ite divines take towards the Safavids? They were at the outset greatly dependent on the rulers, whose power was necessary to impose and protect Shi'ism as the official religion of the state. Though the later Safavids attracted the contempt of the divines through their impolicy, failures, and dissolute living, there is no evidence of any serious challenge to their rule based on doctrine. Nor was there any change in the general characteristics of the Shi'ite outlook, which continued to devalue politics to focus its devotion on the Imam: the true king who was hidden, whose significance was spiritual and cosmic, rather than mundane and earthly.

This political quietism and passivity continued to be a most salient, and at times the dominant, characteristic of Shi'ite religiosity in Persia. This was true not only of the population at large, but of those divines whose pre-eminence in learning and piety secured for them a peculiar primacy and authority recognized by their fellow-divines all over the Shi'ite world. The attitude toward political power of those most eminent ayatollahs was one of silence (*sokut*) or, if silence was to be broken, then their duty, as they conceived it, was to advise and not to fight.

No dynasty following the Safavids could attempt to lay claim to descent from Ali, and none could therefore benefit from the religious aura which this descent conferred. Also, from the eighteenth century onward the Persian state was continually and increasingly under pressure, both external and internal. European states, including Russia, which bordered on Persia, were becoming vastly more powerful than any Islamic state, and their economic, political and military interests could not but impinge on Persia. The downfall of the Safavids inaugurated a long period of disorder. Eventually the Qajars emerged at the end of the century to establish a new dynasty which was to subsist until 1925 when Reza Khan put an end to it. During the

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Qajar period, the Persian state did not enjoy the increased powers which centralization – the outcome of Westernizing reforms – conferred on the Ottoman rulers or on Mohammed Ali of Egypt. At the same time the burden of a traditionally despotic state was felt to be increasingly onerous. A weak yet despotic government enhanced the power of the divines to act as shields and intercessors, standing between the government and the people. Their position was based not only on the respect and veneration shown to them by the people, but also on the fact that theirs were not official appointments, that they enjoyed financial independence which donations by the faithful made possible, and that some of the most important centers of Shi'ite learning lay in Ottoman Mesopotamia, beyond the reach of Persian power. The educational and judicial functions which they, and not the state, discharged, further increased their importance.

Under the successors of the Safavids, the monarch continued to be seen as the shadow of God on earth, and discussion by the religious doctors of the relation between the ruler and the Hidden Imam (and his general agents, the divines) did not deny or impugn the legitimacy of an earthly ruler who acknowledged the lordship of the Hidden Imam, ruling the community of his fellow-believers. It would seem that there were even some divines who were ready to draw a distinction akin to the medieval Western distinction between the two swords, and to argue that rulers were delegated by the Imam to wield the sword, while divines were delegated by him to preserve, transmit and promote knowledge of revelation and divine law. This distinction is not without analogy to the distinction between Imamate and Caliphate mentioned above.

Conditions in late nineteenth-century and early twentieth-century Persia consisted to increase burdens and exactions on the non-official classes, and at the same time to bring the ruler, his court, and his administration into disrepute. One suspicion in particular came to be widely held and propagated, namely that misgovernment was a cause (and perhaps also a consequence) of increasing encroachments by foreigners – whether financial, commercial or political – and that these encroachments would end in complete domination of the Muslims by European unbelievers and the extinction of their independence. For many reasons, the religious classes felt particularly threatened

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by all these ominous developments, and eventually took the lead in opposing the oppression which the Shah and his servants were generally felt to be practicing.

Two Historical Precedents

The two important events in which divines took the lead and revealed the extent of their popular following were the Tobacco Protest of 1891-2 and the Constitutional Revolution of 1905-6. In the first episode, the most eminent divine of the Shi'ite world, from his residence in Samarra in Ottoman Mesopotamia, denounced the monopoly for trade in tobacco (which the Shah, in an attempt to augment his revenues, had granted to a British syndicate) as opening the door to a dangerous foreign encroachment on the independence and the interests of the faithful. He proclaimed abstention from smoking as a religious duty so long as the monopoly was not rescinded. The ban was obeyed, and the Shah was compelled to cancel the monopoly.

The episode clearly showed the great power which the religious classes could draw from popular support. But it did not show that, in calling upon the believers to resist foreign encroachment, the divines were advancing a new theory which made the Shah's power unlawful per se, or *a fortiori* claimed that the divines were the only legitimate rulers in the community of believers. The same holds true of the events of 1905-6. The original demands focused on the dismissal of foreign officials who had been imported to administer the customs, and on establishing a "house of justice" where grievances could be heard and remedied. These events, which eventually led to a Persian constitution granted by the Shah, also had their origin in popular grievances. These related to the profligacy of the Shah, the corruption and arbitrariness of his servants, and the encroaching influence of European powers and European officials to which such misgovernment and oppression led. Here again, prominent divines took up and led the popular cause. But here, too, it cannot be said that a new theory of government based on accepted traditional teachings was put forward which might give sanction to the exercise of political power by divines, or might even dispute the legitimacy of the ruler. What in the end became a movement to obtain a constitution was based, in point of doctrine, on a hodgepodge of Western ideas hardly compatible with Twelver Shi'ite doctrines. Nor did attacks on

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the Shah generally or systematically impugn monarchial legitimacy; they rather strove to cast doubt on the legitimacy of this particular Shah by portraying him as the agent and instrument of foreign domination, and by the insinuation that somehow or another he was akin to, or descended from, those wrongdoing rulers who had fought the Imam Ali and murdered his son, the Imam Husayn.

Just as Khomeini's substantive teachings are suffused with European assumptions and doctrines, so the arguments in favor of a constitution advanced by divines in 1905-6 were also heavily indebted to European sources. The most elaborate argument in favor of a constitution written by a divine and claiming to demonstrate its contentions by appeal to Islamic principles is broken-backed and flimsy, and in fact derives, through the intermediary of an Arabic author, from a treatise on tyranny by an eighteenth-century Italian progressive, Alfieri. The Constitution as enacted, in fact, contained two utterly incompatible groups of ideas: European and Islamic. On one hand, it declared that sovereignty is a trust confided by the people in the person of the Shah, that the powers of the realm are derived from the people, and that all inhabitants of Persia enjoy equal rights before the law. All these propositions, it is obvious, went against the teachings of Twelver Shi'ism, just as did elections, which the Constitution also enjoined. On the other hand, the Constitution enacted that Islam according to the teachings of Twelver Shi'ism was the religion of the state, and made provision for the establishment of a board consisting of five divines who were to examine all proposed legislation, and who had the power to "reject and repudiate, wholly or in part, any such proposal which is at variance with the Sacred Laws of Islam, so that it shall not obtain the title of legality."

This last provision, which remained a dead letter, represents the utmost that, in the favorable circumstances of 1905-6, the divines secured, or perhaps even wished to secure, in order to register the central importance of the faith in the public life of Persia. But the strains between their principles and those derived from Europe were too great to be resolved. The sticking point proved to be the clause laying down equality of rights for all the inhabitants of Persia. This could not be reconciled with divine law which decreed an inferior status for non-Muslims. Only one of the prominent divines in Teheran who had sup-

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ported the agitation against the Shah declared himself in favor. The others were henceforth alienated from the Constitutional cause.

Khomeini Against the Tide

This cursory survey of Twelver Shi'ite political thought will serve to underline how radical Khomeini's departure from it has been. His claim that divines should be rulers has introduced so novel an element in the doctrine that it cannot but considerably increase the strains which the attempt to come to terms with modernity has inevitably occasioned. As is now well known, Ayatollah Khomeini, having fiercely denounced the Shah for oppression and for delivering his country into the hands of the Americans, and having called for the overthrow of the government, was exiled from Persia in June 1963. He went to Turkey, and moved in 1965 to Najaf in Iraq, the most important Shi'ite shrine, where he was to remain until his departure for Paris in the autumn of 1978.

From Najaf Khomeini continued to attack the Shah and his regime in the strongest and most uncompromising terms. He burned with conviction, and was utterly sure of the justice of his cause and of its eventual triumph. As he told an audience of theology students in Najaf:

> It is fortunate that the Muslim peoples are with you and that the masses follow you and take your lead. You will grow stronger. All we need is the staff of Moses and the sword of [The Imam] Ali ibn Abi Talib and their mighty will. If we resolve to set up an Islamic rule, we will also get the staff of Moses and Ali ibn Abi Talib's sword.

This passage figures towards the end of the course of lectures on *Islamic Government* which the Ayatollah delivered in 1970, and which contains his vision of Islamic society and of the central role which the divines must occupy in it. The lectures are far from mere rhetoric. They constitute a closely reasoned legal argument drawing upon Koranic verses, traditions of the Prophet and the Imams, and recognized Shi'ite authorities – the upshot of which is to establish the proposition that, during the absence of the Awaited Mahdi, the only legitimate ruler in the Muslim community is the pious and learned divine. Islamic government, he argues, can only be government according to the divine law. In his lifetime, the Prophet implemented the laws revealed to

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him: "he punished, cut off the thief's hand, lashed and stoned and ruled justly." Obedience to God meant obedience to the Prophet, and the same obedience was due to the Prophet's caliphs, or successors, who were the Imam Ali and those subsequently designated to follow him. It is in general established that a government is necessary for the welfare of the believers — a government which would have the same powers as the Prophet and his (rightful) successors.

But, in the absence of the Hidden Imam, who is to carry on the government of the faithful? The answer, for Khomeini, is simple. During the absence of the Hidden Imam, those who wield authority over the faithful are the just and upright divines who are learned in the law and will execute it. How is this proved? Khomeini quotes a saying of the Prophet asking God to have mercy on his successors, the caliphs. When he was asked who his caliphs were, the Prophet said: "Those who will follow me, transmit my sayings and my doings and teach them to people when I am gone." Here, it is clear, by caliphs the Prophet meant the divines. But the word caliph used here by the Prophet, according to Khomeini's exegesis, is exactly the same word which the Prophet used when designating Ali as his successor. This clearly means that the divines who are the subject of the Prophet's saying quoted above have, in the absence of the Imam, the same authority to rule over the faithful as Ali had. Q.E.D. The divine, then, during the Imam's occultation is "himself the Imam of the Muslims, their leader and their justiciar, he and no one else." This doctrine is now enshrined in the new Constitution, and the expectation no doubt is that Khomeini will himself be acknowledged as that Imam.

It is evident that Khomeini's challenge to political authority is profoundly different in character from the earlier challenges of the divines, during the Tobacco Protest and the Constitutional movement. His doctrine constitutes a radical departure from what over the centuries had been established as the outlook and ethos of Twelver Shi'ism. Khomeini effects this not, of course, by jettisoning Shi'ite teachings, but by so systematically and rigorously interpreting them as to make them unrecognizable in their new uncompromising rigidity. In so doing, he transforms Shi'ism from, on the whole, a passive and quietist religion into an activist and revolutionary one. If the caesaro-

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papism of the Safavids tried to subjugate the religious to the ruling institution, Khomeini's caesaropapism in reverse tries to swallow rule and assimilate it wholly into religion, to make the exercise of political power strictly dependent on right belief, and to outlaw the ruler who does not punctiliously and exactly recite his catechism. This is a state of affairs which, barring short-lived phenomena like the rule of the Sudanese Mahdi, had never before obtained in Islam. It puts us in mind of similar doctrines promoted in Europe in the era of the wars of religion: Calvin's teachings and John Knox's, or, say, that of the famous Huguenot pamphlet, the *Vindiciae contra Tyrannos*. Knowing what the outcome of those vaulting aspirations was, we cannot but entertain dark forebodings about this latest attempt to establish on earth the heavenly city. What this phenomenon reveals and portends is a profound disorder in the conditions of Muslim life today, and a strain, acute and extreme, in Islamic political thought as it tries to come to terms with new and unfamiliar situations. The strain may be exemplified by the conduct of Khomeini himself after his return to Persia. For if the doctrine which he propounded in his lectures of 1970 is the truth and the only truth, the referenda and elections to which he has resorted – predicated as they are on the sovereignty of the people and not of God – cannot but detract from and diminish this truth. His audacious innovations leave the dilemmas facing the divines of 1905-6 unresolved and unsurmounted.

Khomeini, to judge by his lectures on Islamic government, is firmly convinced that an Islamic regime can be set up and can function. Assuming that he survives and does become *de jure* (as he is now *de facto*) the ultimate authority in the state, can he possibly remain immune to the chances and changes of politics? And if he should fail, will not his failure strike a grievous blow against the faith in the name of which he has fought and, so far, won? Some of his fellow divines may feel it unwise to tie the fortunes of Persian Shi'ism so completely to Khomeini's bold experiment. These doubts – dislike of his extreme activism by men brought up to consider silence and passivity as the way of political wisdom; as well as the jealousies, animosities, and fears exacerbated by the very fluidity of current Persian politics; not to mention the ethnic ambitions and cupidities which the Shah's downfall and the dissolution of

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his army has released in Kurdistan, Azerbaijan, Arabistan and Baluchistan – all these in combination may well overwhelm the Savonarola of Qom.[2]

2. Two recent noteworthy studies of Shi'ite thought to which I am much indebted are: J. Eliash, "Misconceptions Regarding the Juridicial Status of the Iranian Ulama" in *International Journal of Middle East Studies*, vol. 10, no. 1 (February 1979); and Said Amir Arjomand, "Religion, Political Action and Legitimate Domination in Shi'ite Iran," *European Journal of Sociology*, vol. 20, no. 1 (May 1979).

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Tales from the Public Sector

Who shall doubt "the secret hid
Under Cheops' pyramid"
Was that the contractor did
    Cheops out of several millions?
Or that Joseph's sudden rise
To Comptroller of Supplies
Was a fraud of monstrous size
    On King Pharaoh's swart Civilians?

Thus, the artless songs I sing
Do not deal with anything
    New or never said before.
As it was in the beginning
Is to-day official sinning,
    And shall be for evermore.

Rudyard Kipling
Departmental Ditties

Damn Lies and Statistics

There is a department in the basement of St. Thomas' Hospital called the Department of Community Medicine, where research is currently being carried out into the health and conditions of the people of Lambeth and Kingston. The main feature of this research is a massive health survey, backed by the Council, in the form of a questionnaire which has been sent to one tenth of the population of Lambeth. The organizer of this project, and others like it, is an American doctor with a Ph.D. who, it would appear, has not had much experience in the art of administration. I worked on the main survey in the Christmas holidays, and was amazed at the work I was asked to do. The greater part of my week was spent signing the name "Donald Patrick" on literally thousands of letters accompanying the questionnaire, for which I was paid, along with another student (who, incidentally, had already been at it a week) £1.40 an hour of the taxpayer's money. Doctor Patrick was too busy to sign the letters himself but apparently felt that

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it was so much nicer for people to receive a hand-signed letter than a duplicated one that the pedantic point of who actually signed it hardly mattered. His difficulties started when he had to send two three-monthly reminders of the original letter to those people who had not answered, and was unable to employ the same people to sign them. It only took one astute observer to recognize the error, paste the three different signatures neatly on a card and return them to the department with the apt comment "How about it?"

But Donald Patrick and his colleagues were not put off by trivial setbacks like this, and in the early part of this year work continued on the survey and another was launched, this time concerned specifically with the disabled. A pilot screen test was sent out asking questions designed to pick out the disabled respondents from the non-disabled. Unfortunately though, the real test was sent out before the results of the pilot had come through, and certain errors could not be put right before it was too late. One of the more outstanding of these was a fault in the wording of a question, the result of which was that all those people in Kingston who wore spectacles were classified as "partially-sighted." This was at least a fault on the right side, but there were problems, too, of an opposite nature. When a member of the department was sent out to interview those people who had come through the test and been classified "not disabled," her first five respondents included: a lady with one leg, a man so crippled with arthritis that he took ten minutes to answer the door, and a bed-ridden lady who replied to the interviewer's questions through the "ansafone" because she was actually unable to make it to the door.

I have just been employed again at the hospital, this time working on the "Pilot Disability Interview Schedule," the follow-up to the screen test, which aims to find out just how restricted disabled people are, and in what ways their handicap affects them. My job was to code the responses of the interviewees, which means finding a number for all of their answers, so that an overall "wellbeing score" could be allotted to them. This was not as easy as it sounds. In fact, the majority of the questionnaires, whether because of misleading wording of the questions or the respondents' failure to understand them, were blatantly "uncodable." But my somewhat vague — possibly even shifty — instructions were that, if I came up against any

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real problems, I could (in effect) alter the answers so as not to muddle the computer. (I thought the idea of the Pilot was to *show* up the errors, not *cover* them up!) Many of the coding problems arose from incompatible statements, which had either been made by the respondents, or wrongly recorded by the interviewers. There was the lady who said that she was, and always had been, single and that her husband was a bricklayer; then there was the interviewer who went mad with the positive answers and ended up with a respondent who had one arm and one leg paralyzed, broken and crooked, one hand and one arm missing, two legs paralyzed and broken, *and* two legs missing, and when asked later on in the survey if she had any problems with her housework, community, or social activities, replied "No" to all three. Similarly, there was the man who listed under "Conditions" chronic asthma and bronchitis, cancer, ulcerated legs and several other ailments but who, in the next section, considered that his health was, in general, excellent. (Perhaps this is carrying the "stiff upper lip" just a little far?)

But the questionnaire was to blame for many of the problems and some questions deserved the flippant answers they received. I felt considerable sympathy for one man who, under the question "Do you joke and laugh with your family as much as you used to?" had said, "Never did," and the one who, to the question "Do you see your family as much as you would like to?" had replied with feeling "Quite as much!" It was obvious in many cases that the interviewers misunderstood the questionnaire as much as the respondents, and in one case the interviewer had faithfully recorded under "verbatim comments" in the "Problems, Symptoms and Illnesses" section a long and detailed description of the problems the respondent had encountered with her gas bill.

There were many obvious faults of a technical nature with the pilot survey, and it remains to be seen whether any of them will be put right before the real one is sent out. But I think it is extremely doubtful whether, even if they are, feasible conclusions could be drawn from the study. If, however, the Community Welfare Department at St. Thomas's Hospital had anything more than a purely academic interest in the answers to these questions, one would be a little more inclined to overlook some errors in the statistics and a little less inclined to resent the vast amount of time and money being wasted through bad

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administration. Clearly many of the respondents themselves have touching faith in the survey and believe that it has some valuable purpose. When they are asked in one section, "Do you need any help with cooking meals, making beds, etc.?" one can almost see their eyes light up as they reply, with moving regularity, "Yes" to all three, presumably in the belief that they will get it. Might there not be something to be said for the National Health Service directing its attentions towards more practical help in this area, once they have found where it is needed? I am sure it would be more rewarding than endless analyzing of dubious statistics.

Catherine Utley

America's Biggest Growth Industry

When the General Accounting Office reports that the federal government spends up to $100 million annually on word-processing equipment, much of it unused, the watchdog media repeat the story — and then forget it. What the press does not tell us is that government waste is the nation's biggest growth industry — and that if fraud, inefficiency, and shockingly zany programs were eliminated, the Federal deficit would be wiped out immediately, taxes could be reduced, and a Federal balanced budget could strike a telling blow at inflation.

The big figures are there for any investigative reporter to see: the $20 billion in legitimate but uncollected taxes which the Internal Revenue Service allows to slip through its fingers or the up to $25 billion lost in fraud and mismanagement by the Department of Health, Education & Welfare. But the waste takes other forms — from the thousands spent by the Defense Department some years ago to study the rectal temperature of Alaskan sled dogs to the $750 a month paid to a Chicagoan by the National Endowment for the Arts for the development of the art of body-thumping.

Recently, it was discovered that there is a lucrative business in salvaging workable typewriters, slightly used desks, adding

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machines, mahogany office furniture, etc. from federal garbage dumps, particularly one at Lorton, a Washington suburb. These items are dusted, polished and sold by private dealers smart enough to work the dumps.

A former Social Security Administration official explained how the system works. "Given the large inventory that most government agencies have, it's much easier just to order new stuff when you need something than to go down to storage and find it," he says. "Then you just get rid of what you don't need . . . And besides, people would rather have a shiny new desk than a used one anyway."

There is a flurry over padded payrolls when the White House lets it be known that the First Lady has hired a $56,000-a-year "chief of staff" to supervise the fifteen people who help the President's wife do whatever she does. But it is considered bad taste to question the propriety of spending the taxpayer's money on a staff for someone who is not even an official of the government.

But the taxpayer has bigger worries. He is footing a bill of unknown size for an "invisible bureaucracy" of "consultants" which is estimated at more than $2 billion a year. Many of these consultants are already drawing salaries from tax-free foundations and think-tanks. In its 1979 budget, HEW alone asked for $200 million for what a former official calls a "very cozy group." And how many consultants are on the government payroll?

Senator David Pryor, Democrat of Arkansas, who heads the Senate Subcommittee on Civil Service and General Services, has been trying to get an answer to that question for two years, and has finally given up in frustration. His subcommittee discovered that though the Department of Energy reported *only* 1,211 consultants in its 1978 report to the Office of Budget and Management, at least another 2,000 were buried away in the bookkeeping.

Senator Pryor says that some of his subcommittee's case histories qualify for inclusion in Ripley's *Believe It Or Not*. For example, HEW hired a $100-a-day consultant to evaluate the department's federally financed educational programs. His final report included such classics of lucid expression as, "The objectives did not specify to the quantifiable of the success of the proposed program." Even for HEW, this was too

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much and the consultant was fired.

Perhaps it was one of these "consultants" who conceived an HEW program to give migrant workers an "interdisciplinary course" in cropdusting. Most of the funds for this program are spent on salaries and supplies, so that there is only enough left to give each student ten hours of flight time, but HEW says that it makes the migrant workers "better space age citizens."

But it is not only the "consultant" who is feeding at the public trough. Having subsidized Cesar Chavez's United Farm Workers union with a $349,000 grant, the Community Services Administration joined HEW to give UFW another $800,000 to build a microwave communications center to connect its headquarters with a series of field stations. Undoubtedly the center makes the UFW's unionizing efforts simpler, but is this a legitimate function of government?

With the federal government spending some $250 billion on economic assistance programs, the handouts to the UFW may seem like small potatoes. But when the Justice Department suggests that fraud and white collar crime eat up $2.5 billion to $25 billion of these assistance funds — and when HEW admits that its overpayments to ineligible recipients in 1977 alone ran to $1.2 billion for Medicaid, $900 million for aid to dependent children, and $300 million in Supplemental Security Income for the aged, blind, and disabled — the magnitude of the rip-off becomes glaringly apparent.

Fraud is only one of HEW's problems. *U.S. News & World Report* has noted that because of "excessive paperwork, overstaffing, overpaying, low productivity, and general administrative inefficiencies . . . in some cases less than two out of three federal dollars for such programs as aid to the poor actually reach the intended recipients."

But HEW doesn't only waste its "own" money. It is directly responsible for driving up hospital costs to their present astronomical level. Administration, social services, and utilization review departments in the nation's hospitals devote 50 percent of their costs to complying with government-required regulations. And that's only for starters. Our hospitals, in fact, spend more than $1 billion a year in coping with government red-tape, and another $1 billion in complying with regulatory demands. A registered nurse must put in the equivalent of one day a week at government-ordered functions which do nothing

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for the patients. Most of the regulations, if an HEW assistant director of communications (English translation, publicity man) is to be believed, are "duplicate, contradictory, and non-productive."

And well they might be. In New York, 164 separate regulatory agencies have their finger in the hospital pie. In Maryland, 108 different agencies tell hospitals how to run their health-care services. Just how much the taxpayer pays for these small armies of regulators has yet to be computed. What the taxpayer does know, however, is that any complaints to HEW about illegal or other mistreatment by hospitals are met by a bland, "There's nothing we can do about it."

HEW, however, is only part of the problem. At the Defense Department, according to the *Christian Science Monitor*, "an admiral who retired four years ago" — his pension benefits have risen 33 percent — "is now making more than the salary of an admiral on active duty. Some 632 generals of two-star rank and above are earning more than all but 28 top officials in the government."

But the Pentagon's civilian work force has not been forgotten. Though it has dropped by 375,000 in ten years, the DOD civilian payroll has increased $8 billion, an average of 142 percent for each worker. And, to take but one expenditure at Defense, the cost for the overhaul of Navy ships has multiplied five times in the past eleven years. Commissaries, a worldwide system of supermarkets and department stores for military personnel, are supported by a government subsidy of some $333 million a year to cover labor costs. According to Representative Dan Daniel, a Virginia Democrat, an audit of three Washington-area commissaries showed losses of millions of dollars in pilferage, erroneous cash register ring-ups, lax accounting practices, and the improper handling of cash.

The Labor Department's handling of the taxpayer's money runs from the insane to the ridiculous. For example, a Wisconsin government employee who lost the filling to a tooth while eating popcorn on the job was awarded workmen's compensation. And the department is running a school in Tennessee to teach adults how to be well-groomed and answer the telephone effectively. "Not everybody knows that they are supposed to bathe daily, brush their teeth, or comb their hair," says the school's executive director. "They know how to call

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someone and ask for a job, but they don't know how to say 'hello' the right way."

And then there is the Assistant Secretary of Labor who flew to Japan at government expense to deliver a speech. He arrived one day late because he was unaware that there is an international dateline. So far, there is no school to teach him the facts of travel. But CETA, the department's community educational training administration, is paying Pittsburgh women $2.50 an hour to learn how to walk, climb, jog, and prepare themselves psychologically for work in the steel mills. The YWCA is asking CETA for $200,000 in the coming year to expand the program.

CETA has a big heart. After an eight-month study, one Democratic congressman found that it was paying up to $13,000 a year, through the District of Columbia Department of Corrections, to inmates serving life sentences at the Lorton Reformatory in northern Virginia. The congressman called this to the attention of the Labor Department a year ago, but nothing has been done about it.

And so it goes.

The Department of Housing and Urban Development bestowed $426,000 on an Alaskan fishing village (population, 1,100) for a new city hall. The Army Corps of Engineers had already given the same village $2.8 million for a boat basin. HUD also decided to build a multiracial "Soul City" in North Carolina to house 50,000 people, spent $28 million for 33 houses, then paid a consultant $65,000 to tell it that it was a bad idea. Nevertheless, HUD is planning to spend some $4 billion this year on similar high-minded projects.

The Departments of Commerce and Interior tossed away a half million dollars to decide which of them should be in charge of sea turtles. The Energy Department spent $6.3 million to set up the first solar energy campus in Blytheville, Arkansas. And the department's Inspector General says that billions of dollars are spent on programs which are being "glancingly" audited in areas where "waste, fraud, and abuse are the greatest."

The tough and stern Internal Revenue Service hands out millions of dollars to individuals filing for fraudulent refunds, but hounds the rest of us because of small errors. For example, a German couple living in Switzerland fraudulently claimed and

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received $500,000 from IRS. A foreign refugee filed 1,600 false returns and collected $150,000. A small businessman filed claim for $1.8 million in 882 returns. While in Federal prison, one man received $24,000 by claiming refunds on taxes he had never paid.

The Agriculture Department put $113,000 into a study which arrived at the astounding conclusion that mothers do not like to iron clothes. The GAO came across an Interior Department memorandum which noted that an estimated $1 billion in coal is being stolen from government lands. The Federal Trade Commission, holding hearings on TV commercials aimed at children, paid $300,000 to organizations that offered to testify. (Consumer's Union received $58,000 to prepare its testimony.) The Consumer Products Safety Commission spent $157 million in four years and delivered just three safety standards — on swimming pool slides, architectural glass, and matchbooks. The General Services Administration has audited only 12 of 8,000 contracts for government purchase of office equipment, and it has wasted billions by making purchases without competitive bidding.

The Federal government's grant industry is almost as big as its consultant industry. Georgetown University received a $46,000 grant to study the ultrastructure of fishes' ears. The Institute of Mental Health contributed $2,500 to our peace of mind for a study of why fat people prefer to dine at all-you-can-eat restaurants instead of a la carte. A Cornell University researcher is $2,360 richer for prying into the sex life of Costa Rican crickets. The government spent another $102,000 to learn why fish get drunker on tequila than on gin. The National Endowment of the Arts gave an artist $6,025 to film the flight of crepe paper thrown from a plane.

The Secret Service installed a $4,000 security system in the home of suburban friends of Jeff and Annette Carter so that its agents would not be embarrassed by being present during marijuana-smoking sessions there which the young Carters attend three or four evenings a week.

The government spends almost $5 billion a year to staff and run its regulatory agencies. These agencies thrust more than 4,000 forms at business and industry, which spent $98 billion to complete them. The Community Services Administration paid $500,000 to an "economic development corporation" and

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continues to pay it $14,000 a month. To date, it has gotten nothing more than a 23-page report of which sixteen pages are reproductions from a Mexico City telephone book. ACTION, a Federal agency headed by antiwar activist Sam Brown, turned over $432,000 to Midwest Academy of Chicago to teach a course in "tactics that range from confrontation to negotiation."

But none of this is new. In 1902, the federal government invested in a reclamation project for the Southwest which was to be completely funded in ten years. In the early 1950s, the Hoover Commission discovered that the government was still pouring money into it. The difference is that, whereas once upon a time, instances of that kind of waste and mismanagement were few and far between, they have become legion since the days of the New Deal and the Great Society. It has gone on under Republican and Democratic Administrations, as government has grown bigger, more powerful, and more careless. It continues under an Administration which pledged itself to reduce the size of the Federal bureaucracy and tighten up its management. And it will not stop until Congress and the Executive Branch begin to consider the taxpayer and an economy which is rapidly being destroyed by profligate spending, waste, and a staggering bill for fraud.

Will that day ever come? Few in the nation's capital are holding their breath. For the waste and the fraud will continue until Cabinet officers and agency heads are made both responsible and accountable for these raids on the Treasury — and until the Congress, the public, and the media develop more concern over a mismanagement bill conservatively estimated at $60- to $70 billion than over gifts of vicuna overcoats and deep freezes.

Ralph de Toledano

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Book Reviews

Treason of the Clerks

THE BRETHREN. *By Bob Woodward and Scott Armstrong.* (Simon & Schuster, Washington, D.C., 1979)

This book is the "Rosencrantz and Guildenstern Are Dead" of constitutional law. It is the story told not by the justices but by their clerks, and it is in fact a compendium of gossip. It reads like a bound volume of *People* magazine, with insights of comparable sophistication. Yet, oddly enough, from this mountain of trivia emerge important conclusions: the Court is overworked, overstaffed, and overly politicized, which explains why so much of its work is second rate.

Begin with the Justices who, despite the clerks' best efforts, are not without influence in the workings of the Court. One searches in vain for adherence to, or even acknowledgment of, principle in the decisions of many of the men described. Instead, these are judges who place scholarship and craft well behind their desired result. Justice Warren: "Warren told [the clerks] how he wanted the cases to come out. But the legal research and the drafting of Court opinions . . . were their domain. Warren was not an abstract thinker, nor was he a gifted scholar. He was more interested in the basic fairness of decisions than the legal rationales." Justice Black: "He meant that cases weren't won or lost, nor was the law decided, on legal niceties." Justice Marshall: "Marshall saw his job as casting his vote and urging his colleagues to do what was right. He had little interest in perfecting the finer points of the law." Justice Burger, according to Justice Harlan: "Burger seemed inclined to slide around issues in order to achieve certain results. He paid less attention to legal reasoning than Harlan thought necessary." Justice Stewart on Justice Burger: "It occurred to Stewart that Burger was much like Earl Warren, inclined to shoot from the hip, or to view cases in purely political terms." Justice Stewart: the Court should have left political questions such as abortion to the states, but "the state legislatures are always so far behind."

All of these views are entirely respectable for legislators and scandalous in judges, for whom "result-oriented" should be a rare term of opprobrium instead of a fair generalization. These are judges who truly cast themselves in the Platonic role, and whose scholarship is sometimes the despair of the law schools. The Court's prestige may be lower at Harvard than in the Bible Belt.

Decades ago Justice Brandeis was asked to account for the then-immense prestige of the Court. He replied, "We do our own work." Today this is no longer true, for each Justice has three or four clerks, adding up to a fine little bureaucracy of 33. No longer do the clerks simply find cases,

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saving the Justice from arduous legal research. No longer do they simply draft opinions after the Justice has made up his mind. Instead, they are a separate and powerful center of influence on the Court, manipulating cases, issues, and Justices to achieve *their* political goals.

The book is candid on this point, and the trivia mounts into an enormous display of trendy leftism combined with astonishing insolence. Who were the clerks, politically? In 1970, "Many of the clerks opposed the war, and felt a little guilty that they had signed up for a year with an establishment institution like the Supreme Court . . . . In a vote on whom to invite to a question-and-answer lunch, one of their top choices had been . . . Jane Fonda." Their political views naturally controlled their views of what the law should be: "White's clerks often urged him to adopt the absolutist First Amendment position of Black and Douglas." When Justice White decided to vote against the death penalty, naturally "the three clerks were overjoyed."

But the politics of the clerks would not be very significant if they acted as clerks, rather than as the Justice's moral tutors. The instances are appalling. Justice White's clerks "were satisfied that White had reached the right result . . . they took the draft, made a few small changes, and retyped it, hoping he wouldn't notice that they had altered a few words." In Justice Rehnquist's chambers, in one case "His own clerk was so embarrassed by Rehnquist's refusal to modify the opinion that he sent a personal note of apology for his role in the case to the other chambers." When Justice Marshall instructed his clerk to draft an opinion regarding the bombing of Cambodia, "the clerk, who was avidly opposed to the war, and impatient with Marshall's timidity and inattention, refused. Marshall would have to write it himself, he said. . ." An opinion from Justice Douglas contained errors because "His clerk, who normally would have corrected it, refused to work further on the opinion after Douglas insisted on retaining an incorrect statement. . . ." One memo from Justice Stewart to the other Justices was not sent because "the clerk thought his boss was being too conciliatory to the Chief. . . . the clerk took matters into his own hands and slipped the original and all copies of the memo into his desk drawer." And perhaps the most egregious example is the clerks' campaign on mental health issues, led by a clerk who argued that the Chief Justice's draft decision "was a fascist opinion." After hearing this argument, "the others . . . thought something had to be done. They would have to mobilize." Which they then did, in manner little less than shocking. All of these people should have been fired; of course none was.

In view all of this, it is not surprising that many clerks – and 170 former clerks spoke to the authors – haven't a shred of honor when it comes to pledges of confidentiality. We learn of one dinner where "Burger didn't have to remind them that he was speaking off the record. They all knew he considered every word he uttered confidential." Everything Chief Justice Burger said is reported here. On another occasion Justice Brennan noted that "There is one responsibility all of them – Justices and clerks – shared. . . . That was to preserve, at all costs, the confidential nature of the internal workings of the Court. . . . Should anything ever leak, that bond of trust [that confidences shared with the clerks will be

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respected] would be broken."

Broken, indeed; it has been smashed to smithereens, and the product of this perfidy is *The Brethren*. One hopes that, along with the expectation that the clerks can be trusted, some of their power in the Court has also disappeared. Time and time again in the book that power is abused to manipulate the Justices. The clerks appear here as arrogant, insolent young left-liberals, and emerge as sworn enemies of the constitutional tradition of judicial restraint. Add a dose of result-orientation on the part of the Justices, and you end up with the Court we have had since Earl Warren ascended the bench in 1953. It is a Court whose opinions are often unpersuasive, whose reasoning is often illogical, whose overreaching is sometimes scandalous, and whose inconsistency can be unsettling.

What explains the success of the clerks in their efforts to influence their putative bosses? Their power stems in part from their intelligence. Often the clerks are simply smarter than the men they serve. It stems also from their ability and willingness to plot against the Justices – including their own – to advance their higher political goals. Finally their power comes from their curious relationship with the judges, who often seek not so much their assistance as their approval. As one key passage notes, "Stewart's clerks were his first constituency." Unfortunately, this is true not simply of Justice Stewart alone.

This sort of relationship appears much more to characterize the Court's liberals than its most conservative members, Justices Burger and Rehnquist. It is not entirely clear who emerges with less credit: the clerks who are willing to abuse their position to manipulate their employers, or Justices of the Supreme Court who are so intellectually or politically insecure as to be swayed by the arrogance and the adolescent politics of 25-year-olds.

Why does the Court have so many clerks? Because its work load is too heavy, so that the load cannot be "carried" without them. Clerks are a false solution, of course, for the load is not carried by the Justices at all, but pushed onto the shoulders of the younger men. Surely this book is ammunition for those who seek a reduction in the Court's caseload, so that once again the Justices may do their own work – or most of it. And just as surely, the tales told here argue for a cutback in the number of clerks, so that they do not achieve the critical mass which creates a group whose members are more loyal to each other than to their individual employers. Obviously, the clerks exaggerated their role in reciting it to the authors; Rosencrantz and Guildenstern did not view themselves as minor characters. Yet the role of the clerks is nonetheless pernicious, and the clerks had no reason to misstate to Woodward and Armstrong either their political views or their manipulative intent. If they failed in much of what they tried, their efforts are still enough to warrant concern.

If the book is (unintentionally) hard on the Justices and on their clerks, it is equally hard on the authors. As "new journalists," they do not bother with sources, footnotes, and the like. We deal here with historical fiction, wherein the usual omniscient narrator knows what "Burger wondered," what "Brennan doubted," what "Powell knew," what "Marshall thought." The authors know about as much constitutional law and

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history as they do Sumerian, and absent from the book entirely are actual *thoughts*. On any particular point – the meaning of one case, the relations between Justice A and Justice B – one ought to seek corroboration before adopting the conclusions found here. Similarly, the clerks' claims are to be doubted – except insofar as they have no reason to exaggerate – in describing their goals, methods, and politics.

The Brethren is, then, depressing, for it shows that journalism and the Supreme Court are two important institutions whose standards have fallen very far very fast. Unfortunately, the picture of the Court given here accords all too well with that which students of its opinions will have formed: for at least two decades, neither intellectual distinction nor dedication to the limited role of courts in our constitutional system has marked the Court's work.

More depressing still is the likely future: more overwork, more reliance on more clerks, and more appointments based on politics and race (and soon sex) than on sheer merit. Now here is a matter to put to the presidential candidates, and include in the party platforms: how ought Justices to be selected? Will you ignore race and sex and appoint on the basis of merit? Will you support efforts to reduce Court workload? And most of all, the question that will never be asked: Will you try to cut their budget if they ever try to have *more* clerks?

Elliott Abrams

Dismal Yes, Science No

KNOWLEDGE AND DECISIONS. *By Thomas Sowell.* (Basic Books, New York, 1980)
FREE TO CHOOSE: A PERSONAL STATEMENT. *By Milton and Rose Friedman.* (Harcourt Brace Jovanovich. New York, 1980)
THE FUTURE OF BUSINESS REGULATION. *By Murray Weidenbaum.* (Amacom, New York, 1979)
ANNALS OF AN ABIDING LIBERAL. *By John Kenneth Galbraith.* (Houghton-Mifflin, Boston, 1979)

Economics is a discipline, not a science: a means of analyzing problems, not a guarantee of solving them. The financial world, teeming with infinite interconnected variables, bears no resemblance to a test tube; so economic predictions bear none of the apodeictic certainty of chemical equations. There is, quite literally, no limit to the number of factors involved in the economic calculus. But this very diffusion, while making economic certainty unreachable, also makes economic wisdom inexhaustible. Just as every aspect of human life influences the realm of economics, so too economic analysis can shed some light on every aspect of human life. The best of economists annex whole new analytic frontiers; Adam Smith,

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after all, taught moral philosophy. The range of economic analysis is limited only by the imagination of the economist. And the primary characteristic of a superior economist is (appropriately enough) elasticity of mind.

If imagination were the only desideratum, few contemporary economists could match J. K. Galbraith. *Annals of an Abiding Liberal*, like all Professor Galbraith's books, crackles with witty insights and imaginative prose. Unfortunately, the prose is marred periodically by the cloying self-congratulation that has become his trademark. And the insights, too, are tainted: These are the same tired insights that have carried his reputation for a generation, through countless books, essays, and drowsy classroom lectures.

By now Professor Galbraith's theme is familiar. The pure economic models, he argues, are insufficient; the marketplace in practice is distorted by the overweening powers of large corporations. Therefore the textbook remedies are unavailing; the government must take an active role in reformulating the economy.

At first this critique seems compelling. Surely Adam Smith did not envision the political and econoic power amassed by multinational corporations. But do those corporate giants distort Smith's theories? Or do they grow to dominance because of *prior* distortions of the free market? And, even if the market mechanisms have broken down, what is the use of replacing one overweening power – the corporations – with another – the government? So Professor Galbraith's imagination is thoroughly selective: he can conjure up examples of marketplace failure, but he fails to notice the palpable evidence that government controls have not produced any ameliorating influence.

In *Free to Choose*, Milton and Rose Friedman produce the hard facts that he so conveniently elides. The history of government forays into the marketplace has been a history of unmitigated failure. The government-controlled Soviet economy today is a disaster; the mixed American economy is increasingly fragile; the free-market economy of Hong Kong is a robust success. In a telling appendix, the Friedmans reproduce the Socialist Party platform of 1928 and note that virtually every suggested reform has been adopted in the U.S. since that time. Would anyone argue that our economic ills have been thereby cured? Contrary to Professor Galbraith's complaint, the vision of a government-controlled economy has been tested, and found wanting.

The Friedman work is a hybrid, concocted from Milton Friedman's classic *Capitalism and Freedom* and the current television series from which this book draws its name. The authors use the dramatic, graphic illustrations that television demands, and the result is an argument that is unusually blunt and forceful even for a born controversialist like Milton Friedman. Still, the unique format does take its toll. Television journalism has a special immediacy, but it cannot dig as deep as a more ordinary essay. And joint authorship occasionally leads the Friedmans into awkward stylistic devices, such as the mysterious formulation (used several times in the book) that "one of us" made a certain proposal in a *Newsweek* column.

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However, for those not already conversant with the theories explored in *Capitalism and Freedom, Free to Choose* furnishes an excellent, readable primer in economics. Even veteran will read with mounting interest as the essays move through welfare programs, consumer protection, and a longish chapter on educational vouchers – all leading to the climactic discussion of the money supply. Once again, with compelling vigor, the Friedmans' argument calls for an end to all government interference in the marketplace, and a renewed attention to controlled monetary growth.

The basic thrust of the Friedmans' argument is disarmingly simple. Whenever two people exchange economic goods, both parties expect to realize a net profit; otherwise the exchange would never take place voluntarily. Free exchanges increase the welfare of everyone concerned. Therefore, as long as all parties are properly informed about the results of their transactions, the best economic system is the one that allows the greatest number of such exchanges: the free market. Of course, it is no small matter to stipulate that all parties should be properly informed. That very complex subject furnishes the subject matter for a brilliantly original book by Thomas Sowell.

For the first half of *Knowledge and Decisions*, Dr. Sowell prods the reader to imagine the innumerable discrete facts and theories that bear upon every economic decision. Through 160 pages, he teases the reader out of the realm of sterile textbook examples, piling on example after example of the interplay among economic data. (My own favorite: his explanation of how a dramatic increase in demand for yogurt would constitute a financial burden for baseball players.) Much of the available economic information is uncertain at best, and much more is heavily subjective. As Dr. Sowell points out, the very decision to embark on an avowedly "profit-making" enterprise often constitutes an act of wishful thinking. Yet no economic system can hope for success unless most decision makers within the system can rely on the accuracy of the information they receive. As the accuracy of that information declines, the efficacy of decisions suffers accordingly.

Information is not cheap, nor is abstract "expertise" satisfactory as a substitute for firsthand knowledge. Dr. Sowell draws an analogy to anthropology, commenting that while an academic expert can glean some information about prehistoric tribes, he would know incomparably more if he could somehow arrange to live among those tribes even for a few days. The message is familiar: There is no substitute for experience. Of course, one can distill direct experience into generalized principles, but those principles are less precise than the original. Moreover, the process of distillation is costly in itself; it takes time and effort. So decisions based on abstract principles are simultaneously more costly and less useful than decisions made by the people directly involved.

Unfortunately, Dr. Sowell continues, the decision-making powers of our society today are gravitating toward precisely those institutions whose information is most costly and least precise. No social unit within our society can obtain and absorb information as quickly as a family, and yet the decision-making domain of the family is contracting. Conversely, federal courts and regulatory agencies face prohibitively high costs to

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obtain knowledge, and yet they are making more crucial decisions today than ever before in American history. The problem is compounded by the eagerness with which judges (and crusading intellectuals) arrogate new powers to themselves.

As more and more decisions are drawn into the orbit of the federal judiciary and regulatory apparatus, and as the cost of obtaining information rises, the marketplace is increasingly distorted in favor of special interest groups. The disinterested citizen has neither the resources nor the incentives to overcome the barriers to his entry into the decision-making process. So courts and agencies hear the peculiar views of interest groups, without the countervailing views of ordinary taxpayers. The process feeds off itself, since the special interest groups furnish the only feedback available to their judges. The costs of changing a decision – especially a decision made by a central legal authority – are even more discouraging than the costs of influencing the original decision. So gradually, inexorably, the rise of centralized government decision-making saps the freedoms of the individual. Dr. Sowell's book is not pleasant reading for a gloomy evening.

Fortunately, the demonstrable failures of centralized economic planning are becoming obvious to even the most thoroughly indoctrinated observer. Taxpayer revolts and a general cynicism about the capacities of government might indicate the way toward a solution. The Friedmans end their book with a chapter entitled "The Tide is Turning." And economists like Murray Weidenbaum have finally succeeded in drawing public attention toward the manifold costs of government regulation.

J. K. Galbraith, in the book discussed above, argues that public adulation is a sure sign of an economist's incompetence. (That argument boomerangs, by the way; does any other economist match Professor Galbraith's name-recognition?) By that measure, Murray Weidenbaum is obviously competent. For several years he has worked in undeserved obscurity, cataloguing the disastrous side effects of government regulation. Now, finally, his work has begun to catch the public eye. *The Future of Business Regulation* arrives just in time to capitalize on that newfound public attention.

Newspaper editorialists have already discovered the most vivid gems in Dr. Weidenbaum's catalogue: the mounds of paperwork required by federal rules; the costs ($665) tacked onto the price of an automobile by government requirements; the unending litany of outright regulatory boondoggles. But the more serious point of Dr. Weidenbaum's book involves the secondary and tertiary costs of regulation. The research that is abandoned; the plants that remain unbuilt; the inventive minds that spend their careers hassling with red tape: all these, too, are costs of government regulation. Every unnecessary government intervention detracts from the efficiency of not only the firms directly involved, but also the firms with which they do business – ultimately, with the entire economy.

Perhaps the most debilitating consequence of central economic planning is the mood it creates among its victims. Corporations in the thrall of federal regulators are prevented from making the transactions they would ordinarily choose; their decision-making horizons are foreshortened. So

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they are encouraged to focus on narrower issues, ignoring the knowledge they now cannot use. Eventually, as the impact of regulation grows, they are encouraged to devote their greatest efforts to satisfying the regulatory agency rather than the marketplace. The largest corporations, then, have every incentive to continue distorting market forces – and the political process – in their quest for regulatory favors.

As the first step toward economic sanity, Dr. Weidenbaum calls for American business to put its own house in order, marshalling its energies for a concerted bipartisan attack on regulatory inefficiencies. Such an attack would indeed be fortuitous, but is it likely? The signs seem to point in the opposite direction. Chrysler has accepted its handout gratefully, U.S. Steel is looking for some similar relief. Nor does it make sense to criticize the corporations that curry favor with the government; they are only obeying the dictates of the marketplace as it has been rearranged.

No; the impetus for constructive economic change will not come out of corporate boardrooms, nor from any other special interest group. The current mixed economy still provides abundant opportunities for the machinations of special interests. It is the *ordinary* individuals and taxpayers whose interests are most severely damaged by government interference. To galvanize that hodgepodge of particular interests is a Herculean feat, but not an impossible one. The people will act whenever they think action suits their welfare. And, with the help of books such as these, they will eventually realize the benefits of action, and the costs of inaction. When this economic wisdom is transferred into the political realm, reform will be underway.

Philip F. Lawler

Freeze-Dried History

AMERICA REVISED: HISTORY TEXTBOOKS IN THE TWENTIETH CENTURY. *By Frances FitzGerald.* (Little, Brown, Boston, 1979)

American school textbooks are a sorry lot: on this the *Wall Street Journal, Newsweek,* and the *New Yorker* have agreed in recent months. Ms. Frances FitzGerald, whose articles on textbooks in history originally appeared in the *New Yorker*, gives us a lively book about the many failings of these dull manuals.

Frances FitzGerald is known chiefly for a book about the war in Viet Nam (described as "fuzzy" by an acquaintance of hers) and for articles denouncing the Shah and other possessors of power. Although she scoffs at "socialist realism" in literature and art, she frowns on textbook authors who take a dim view of communism. As an historian, she is a disciple of Richard Hofstadter. Her current-affairs prejudices are intruded occasionally into *America Revised*, which is a pity: for they are irrelevant to her

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principal arguments, and may vex some people who otherwise would be moved by her book.

For *America Revised* generally is a sound and painstaking piece of work. Ms. FitzGerald finds practically all of the American textbooks in history shallow, dreary, colorless, abstract in the bad sense of that word, written with a primitive vocabulary, evasive on many points, trendy, and blown about by any current wind of doctrine. She is quite right.

Also, as she points out, these textbooks actually are written by anonymous editors, neither scholars nor stylists. The well-known professors whose names appear on the title-pages are authors only nominally. This is true even of Richard Hofstadter, she is candid to remark:

> A teacher who looked through a number of texts would discover that since the nineteen-thirties all historians have written their textbooks in much the same style – indeed, in a style that can only be described as textbook prose. Reading a few paragraphs here and there, the teacher would almost certainly be struck by certain discrepancies – certain ideas quite foreign to the authors. For instance, Richard Hofstadter's *A People and a Nation* (Clarence L. Ver Steeg, co-author) contains the thought that the immigrants of the late nineteenth century "introduced variety into American life, adding immeasurably to its color and interest," and that "in time they showed their ability to enter the mainstream of American life without giving up either their identity or their distinctive qualities." It's hard to believe Hofstadter, that brilliant stylist and caustic critic of American liberalism, could have written such a sentence. Similarly, many of the texts omit or contradict the very interpretations of history which made their supposed authors famous: Charles and Mary Beard's school history scants economics as a factor in the making of the Constitution; the nineteen-thirties text that bears Commager's name contains no intellectual history at all.

The anonymous textbook editors, in turn, are oppressed by inflexible demands for "readability." Many school personnel who select textbooks for their systems deliberately choose a textbook designed for the seventh grade, say, in the ninth grade – so that the pupils will have no "reading problems." "Readability" is determined by a formula which its inventors intended for the general public, not for schools; and this rather complex formula, moreover, is misinterpreted and misapplied by educationists. The result is not merely a highly restricted vocabulary of simple words, but short and choppy sentences: that is, unreadable books dedicated to "readability." Textbook editors know this, but bow submissively to the degradation of the democratic dogma in classrooms.

On such considerations, Ms. FitzGerald is rather disappointingly brief. She does set before us, however, an admirable example of style in history textbooks: David Saville Muzzey's *American History*, which for decades dominated the school market.

> In comparison with other history texts, it is wonderfully lively and colorful. The vocabulary is large, and the images are unconventional. Verbs always carry the sentences, and the sentences are varied enough to create nice changes of rhythm. Not only the prose

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> varied enough to create nice changes of rhythm. Not only the prose is lively – so is the world that Muzzey creates for children. His history is full of characters – people with beliefs, emotions, and voices of their own. There is a good deal of scenery, very few abstractions, and many wonderful stories.

Muzzey is altogether out of print now. Frances FitzGerald might also have mentioned the prose of John Bach McMaster – who, in addition to his famous *History of the People of the United States*, did write a commendable history for young people. It would be a pleasant and valuable labor for someone to bring out a textbook based on McMaster – and acknowledging McMaster's mastery.

Most of the FitzGerald book is concerned with the intellectual feebleness of textbooks. Nowadays these manuals are adrift, with no discernible political or intellectual bent; the textbook firms try to please everybody and displease nobody, a hopeless task. They cringe before any "minority group" which demands recognition of its sufferings and its splendid achievements. "The word 'controversial' is as deeply feared by textbook publishers as it is coveted by trade-book publishers. What a textbook reflects is thus a compromise, an America sculpted and sanded down by the pressures of diverse constituents and interest groups."

Ms. FitzGerald, a systematic journalist, interviewed a good many people. Here is an extract from one revealing conversation. One anthology had been criticized in a newspaper editorial; therefore the offending selection had to be deleted. The woman textbook editor "went on to say that she had to revise the anthology – a task that consisted of removing the offending section and finding stories by two American women and a Puerto Rican man to replace three short stories by Anglo-Saxon men.

"'Isn't that a bit arbitrary?' I asked.

"'Oh, yes,' she said, 'But, you see, we're under such great pressure. We'd never sell the book without a Hispanic-American.'"

Frances FitzGerald is no enthusiast for the several groups of "social studies" reformers who appeared during the sixties and seventies – the "New Social Studies" people, or the "New Romantics," or the "Back to Basics" set. Of the New Social Studies ideologues, she writes, "Attacked for being too intellectual, the reformers were in fact not intellectual enough. Nearly all of them, even Bruner, lacked philosophical training. Not only did they fail to develop any original ideas about the structure of knowledge but they actually confused the social sciences with science."

Then what reforms does Ms. FitzGerald advocate? She is not specific. What she demands is something for the mind. She believes that children are capable of reading and thinking, and that they are ill-treated by the existing textbooks. She entertains a healthy contempt for most pedagogues:

> The assumption of pedagogy is, after all, that children are different from adults. From this assumption it is possible to proceed to the conclusion that children (even high-school students) are very different from adults – weird, deformed creatures who require salvation rather than simply schooling in history or English. While the Puritans believed that children were naturally sinful and had to

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> be educated in virtue, modern pedagogues tend to believe that children are mentally ill . . . . Similarly, the study of teaching methods carries with it the assumption that children can and should be manipulated in certain ways. On this line of reasoning, it is possible to proceed to the proposition that the aim of teaching is to obtain as much control over children as possible. It is not necessary to proceed in this direction – any more than it is necessary to believe that children are mentally ill – but in practice many professional educationists and their critics have done so in varying degrees. Pedagogy, in sum, is not just a vague and confusing subject, it is dangerous to those who think about it too long.

Amen to that. In this, as in much, I find myself in cordial agreement with Frances FitzGerald. Having reviewed schoolbooks – and particularly textbooks in history – for a quarter of a century, I have observed every discouraging trend which Ms. FitzGerald describes. The smug, patronizing textbooks of the fifties, with their endless references to "our America" and "we Americans," have given way to the "problems" obsession of current manuals. Both approaches are superficial and boring.

Can anything be done to reinvigorate the study of history by young people? If nothing is done, soon we will have a generation of Americans almost wholly a-historical, stuck fast in what T.S. Eliot called "the provincialism of time." Their own lives will be impoverished by ignorance of the past, and public concerns will be mismanaged even worse than at present by public men uninformed by that collective memory which we call history. As Ms. FitzGerald puts the point in her final sentence, "To teach history with the assumption that students have the psychology of laboratory pigeons is not only to close off the avenues for thinking about the future; it is to deprive American children of their birthright."

The obstacles to reform of textbooks in history, or in any liberal discipline, are disheartening. This reviewer recently was made director of the social-science program of a non-profit body that prepares improved textbooks and endeavors to get them used widely. From being so mordant a critic of the manuals as is Frances FitzGerald, I am translated to the heavy duties of a practical reformer.

First one has to deal with the commercial publishers of textbooks, whose weaknesses Ms. FitzGerald sufficiently examines. Their primary interest is to make money – or at least to survive in a market intensely competitive, in a time of static or declining school enrollments. Textbook publishers shy away from the risks of restoration or innovation.

Second, and harder still, one must deal with the enormous public school apparatus, whose administrators (with here and there honorable exceptions) are even more set in their ways than the publishers, and who are satisfied if they can maintain some sort of tolerable order in school corridors and fare tolerably well at raising the millage. Some of them look upon history as "curriculum enrichment" at best – perhaps as a mere fringe activity.

Third, one must convince teachers that the teaching of history can be lively and important – and that their young charges are capable of some degree of reason and imagination, and even of apprehending compound

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sentences. This is weary work, despite encouragement now and again from the better teachers.

And there are other difficulties, big ones. Yet Frances FitzGerald's book has been widely and favorably reviewed. Perhaps this country's present adversities may suggest to not a few parents and teachers and school administrators – aye, and even to some textbook publishers and the gentry who lay down the laws about "readability" – that, in Santayana's aphorism, those who ignore history are condemned to repeat it.

Russell Kirk

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Book reviews in this issue are contributed by: ELLIOTT ABRAMS, Washington attorney and writer; RUSSELL KIRK, Distinguished Scholar at The Heritage Foundation; and PHILIP F. LAWLER of the *Policy Review* staff.

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Short Shrift

M. E. Bradford
A Better Guide Than Reason: Studies in the American Revolution; introduction by Jeffrey Hart (Sherwood Sugden and Company, 1117 Eighth Street, LaSalle, Illinois 61301) 1979.

The debate between Professors Bradford and Harry Jaffa about the meaning of the Declaration of Independence is, as Professor Jaffa himself has observed, one more instance of a controversy that has plagued our nation literally since its birth. When intelligent men dispute the meaning of the documents upon which the Republic is founded, the potential for social conflict is enormous. Fortunately, the two Professors and their respective supporters are not violent men, and their controversy – lively as it is – has been confined to academic books and journals. So although the Civil War arose out of the same basic argument, it is not likely to arise again – out of these quarters.

According to Professor Bradford's interpretation of the Declaration, the vision of equality promulgated by Abraham Lincoln is a destructive heresy against the American political creed. In defending Lincoln, Professor Jaffa has the better of the argument. But one vital question remains unanswered: How can a nation "dedicated to a preposition" accommodate the honorable men who dispute that proposition, or those who dispute the wisdom of dedicating a nation to *any* proposition? Professor Bradford is not easily dismissed; he can hearken back not only to Calhoun but also to such stalwart patriots as Patrick Henry and John Dickinson. These partisans have lost all the philosophical battles, but they are still waging their quiet war.

– P. F. L.

Ernest van den Haag (editor)
Capitalism: Sources of Hostility (Epoch Books, New Rochelle, N.Y.) 1979

This is an exceptionally valuable analysis of opposition to the free market system. The contributors to this book concentrate not on the economic arguments of socialists, for proving the success of the free market seems scarcely relevant to the socialist mind. Instead, they explore the more intractable source of hostility, psychological and emotional disquiet.

According to Ernest van den Haag, a fundamental reason for the fierce opposition to capitalism, especially among intellectuals, is that in the free market material benefits are not allocated according to the moral worth of the recipients. An appealing movie actress, he states, is not morally superior to a faithful nurse, though the former may earn more money for good economic reasons. "A socialist economy may have a psychological advantage. Increases in income and promotion in status are, as it were, officially regarded as morally deserved." That the market is likely to lead to benefits for everyone superior to anything achieved in socialist societies seems of little importance to intellectual

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proponents of central planning. Indeed, capitalism is a victim of its own success. "Reduction of inequalities suggests that any specific remaining equality is not inevitable. Hence, all reductions short of full equality are felt to be incomplete." It seems this way especially to intellectuals, who, with the secularization of the justification of capitalism, have most to gain in rearranging society and centralizing planning according to the moral systems they produce.

Peter Bauer continues this theme in an analysis of the reason that despite the extraordinary success of the market in Japan, Malaysia, Hong Kong, and Singapore, central planning is seen in the Third World as the *sine qua non* of economic progress. Central planning is the most convenient means of accentuating the power of the ruling elite and the prestige of the intellectuals, who have imported socialist theories from the West. Marxism-Leninism, in addition, offers the appeal of emotional integration of the rulers and the ruled. Prof. Bauer analyzes the influence western intellectuals, institutions, and colonial administrations have had in favor of central planning.

Lewis Feuer presents a psychological analysis of the causes of opposition to the market, especially among intellectuals. According to Prof. Feuer's thesis, capitalism has served as a means of channeling aggressive drives against the external world into constructive purposes. "When an unprecedented plateau of comfort is attained for a large class of persons, so that there are no basic challenges . . . the aggressive energies that were previously directed outward in commerce and industry are now turned inward against the self or against society." The result is "a denigration of material success, of the beauties of art and language, of the structure of law, and of the criteria by which the market allocated places, privileges, and rewards."

Roger Starr, Nathan Glazer, Dale Vree, and Stanley Rothman critique the foregoing essays. According to Mr. Starr, consumers are disturbed by the very freedom and choice offered by the market system.

– R. B.

Sar Levitan and Richard S. Belous

More than Subsistence: Minimum Wages for the Working Poor (Johns Hopkins University Press, Baltimore, Md.) 1979.

It is interesting to find an academic book which sets out to provide a serious analysis of the effects and supposed benefits of minimum wage legislation. But two labor economists from George Washington University have gone even further, by showing, at least to their own satisfaction, that minimum wages are not a major cause of unemployment.

The book does provide a very useful history of American minimum wage legislation, and there is a valuable chapter on the Congressional debate which led to the present law. There is also a good summary of various theories of unemployment.

The real problem with the book lies in the authors' assessment of the weight of the evidence. They claim that the data are so imprecise that no clear verdict is possible. Now, one would have to admit that it *is* a

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little difficult to disentangle the damage wrought solely by minimum wages from the rest of the government-created havoc, but it would be a brave man who would argue seriously that minimum wage laws have not increased unemployment among the least employable groups in society, such as young blacks. Study after study reaches the same conclusion. Before minimum wages were enforced, there was virtually no difference in unemployment rates between black and white youths. Now the rate among blacks is more than twice as high. In countries such as the United States and Canada, where young people are 'protected' by the same minimum wage that applies to adults, youth unemployment is some multiple of the adult rate. In countries where there are wide exemptions, such as in Britain and Germany, there is no significant difference in the rates. What more evidence is needed?

As the authors contend, minimum wage legislation does prevent people from being exploited through low wages. It does so by throwing them out of work.

— Stuart Butler

Austin Ranney (editor)

The Past and Future of Presidential Debates (American Enterprise Institute, 1150 Seventeenth St., N.W., Washington, D.C. 20036) 1979

The contributors to this book consider whether televised debates should be made a permanent feature of presidential campaigns. The most fervent advocate, James Karayn, found the debates of 1976 to be "dramatic and enlightening," "exciting and vital," "fresh, new, and revealing," "history-making," and very "face to face." Mr. Karayn is a television executive. He was also director of the debates. He does admit that "both the press and public squandered an opportunity to enlighten each other about the campaign," and somehow goes on to advocate making the debates compulsory. As for the material being squandered:a candidate, in order to make a winning impression must, according to Nelson Polsby, be judged favorably amongst the following categories: general appearance, poise, fluency, good manners, lack of perspiration, and good posture. In other words, it's all swimsuit and no talent. In their article, Stephan Lesher, Patrick Caddell, and Gerald Rafshoon make clear that the debates of 1976 were important because they helped the candidates improve "their images" in "public perception" and so forth. Doubts arising about the relevance of the debates to anything substantive are encouraged by Mr. Caddell, who compares presidential debates to football games: "a fan roots for his team, but if it does not win he does not stop being a fan of that team."

The other contributors are hardly more assuring.

— R. B.

James H. Wentzel

Countdown 1984: A Review of Federal Government "Minority Group Preference in Small Business and Public Works Programs (National Legal Center for the Public Interest, 1101 Seventeenth St., N.W., Suite 810, Washington, D.C. 20036) 1980. Foreword by Sidney Hook.

The next case in the quotas-goals series to be decided by the Supreme Court will involve preferential granting of contracts to minority firms

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for Federal programs. This concise pamphlet examines the issues leading up to *Fullilove v. Kreps*. The issue in this case will be somewhat different from those in *Weber* and *Bakke*, as the present case will concern whether Congressional acts violate the constitution. In 1978, Congress ratified past practice of the Small Business Administration by authorizing that a certain number of Federal contracts be granted on a noncompetitive basis to firms at least fifty-one percent owned by groups that have suffered the effects of discrimination. The law states that "such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities." Asian Pacific Americans applied to the SBA to become one of the "other minorities." They qualified. Hasidic Jews were rejected. The Japanese American League also wants in and has filed a petition with the SBA, which cites such evidence of discrimination as the immigration act of 1907.

In the Public Works Employment Act of 1977, Congress decreed that ten percent of grants shall be expended for "minority enterprises." This time the winning minorities were "Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts." Hence, Mr. Wentzel asks, "Does the statute mean that all citizens of Hawaii and Alaska (other than those who are purely 'white' and do not speak Spanish) can qualify?" This is likely to lead to tricky problems: How "purely" ethnic must one be? How much Spanish must one know? As Mr. Wentzel states, these problems can only further the Balkanization of our society.

As these acts of Congress conflict with the 1964 Civil Rights Act, the question of equal protection must ultimately be addressed for the Court to validate or reject the concept of reparations for certain minorities. Mr. Wentzel contends that "the statute *on its face* offers no rational basis for the distinctions it imposes; it is *on its face* uncertain of the criteria to be used in determining business enterprise eligibility."

One wonders whether this official preferential treatment will qualify future generations of Hasidic Jews and nonSpanish-speaking whites to become preferred "other minorities."

— —R. B.

Nathaniel Weyl

Karl Marx: Racist (Arlington House, New Rochelle, N.Y.) 1979.

On the basis of this analysis of the writings of both Marx and Engels, one is unlikely to think of two less likable people. This is because neither Engels nor Marx seemed to approve of any ethnic group unless it was suppressing a group they liked even less. They didn't like Jews, Latins, Negroes, Scandinavians, Orientals, Greeks, Russians, and other Slavs. But Magyars, as a racially superior group, deserved to dominate their Slavic neighbors. Marx referred to Russians and other Slavs as "Lumpengesindel," meaning garbage, rabble, or riffraff. With Marx's blessing, Engels wrote in the *Neue Rheinische Zeitung* of a coming revolutionary war in which the Germans, Poles, and Hungarians would "take frightful revenge on Slavic barbarism. The general war. . . will . . . destroy all these little, bull-headed nations so that their very name will

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vanish. The coming war will cause not only reactionary classes and dynasties but entire reactionary peoples, too, to disappear from the face of the earth. And that too will be progress." "For Marx," Mr. Weyl comments, "the touchstone of any theory of the origin and formation of peoples was whether it provided ideological justification for his hatred of Slavs." Marx wrote to Engels that Russians are not even Slavs: "[They] do not belong to the Indo-German race, but are *des intrus*, who must be hurled back beyond the Dneiper."

In his correspondence to Engels, Marx used the English word "nigger" instead of the emotionally neutral German word. He embraced a theory that the Negro is not an evolved ape but "a degenerate man." Marx's son-in-law, who was one eight Negro, was "the Gorilla." When his son-in-law ran for office in a Paris district that included the zoo, Engles commented that this was highly appropriate as "in his quality as a nigger" he was "a degree closer to the animal kingdom than the rest of us." *On the Jewish Question* and "the Russian Loan" are Marx's primers in Jewish world conspiracy theory ("We find every tyrant backed by a Jew") and his private correspondence is littered with anti-semitic epithets. The German-Jewish socialist leader, Ferdinand Lasalle was "the Jewish nigger."

To Marx, the proletariat consisted of "dolts" and "asses." In sum, Marx and Engels disliked all segments of humanity regardless of race, creed, or color.

– R. B.

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